

*Stakeholder Review of the Draft Chesapeake Bay Preservation Act Amendments  
Loudoun County, Virginia*

**Summary Report of the Stakeholder Process**  
**12-30-10**

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## **1. Assignment Given to the Stakeholders Group.**

The charge given the group by the Board of Supervisors on October 5, 2010, was to *“look at options that address concerns identified by stakeholders with the goal of providing as much flexibility as practically possible while reasonably staying within the parameters of the Chesapeake Bay Preservation Act.”*

The Board directed staff to work with the stakeholders and *“bring back staff’s recommended revisions to the Chesapeake Bay Preservation Act Amendments to the Board of Supervisors no later than the Board’s second business meeting in January for a Committee of the Whole discussion.”*

Subsequent to the Board directive, the County retained the services of Milton Herd, AICP, to facilitate the meetings of the stakeholders. This was to allow the stakeholders to negotiate among themselves rather than with the staff, with the understanding that staff would provide its recommendations separately to the Board.

## **2. Summary of Actions Taken**

### **a. Resolved Issues (from the Issues Matrix) (In descending order of level of agreement)**

Staff identified 36 issues in the original Issues Matrix. The stakeholders added six more for a total of 42 issues. Twelve of these were resolved to at least some degree. Five of these twelve had full consensus; the other seven received at least a 2/3 super majority level of support of those present, which the group defined as consensus.

(Note that the resolution of some major issues made other minor ones moot in terms of the recommendation of the group. For example, by recommending that the grandfathering provision be amended not to require compliance with the ordinance (Issue #36), the discussion of the wording of “greatest extent possible,” “extent possible,” or “extent practicable” (Issue #9) became irrelevant).

### **#4. Should the Draft RPA Screening Tool be eliminated? (RMA/Possible RPA identified in yellow).**

*Decision:*

Eliminate the Screening Tool. (Option #2 from the Matrix)  
(Issue Resolved with full consensus)

### **#19. Should the Ordinance include the optional provision to allow a plastic filter to be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield as an alternative to the mandatory pump-out?**

*Decision:*

Retain the current draft Ordinance (Option #1 from the Matrix)  
(Issue Resolved with full consensus)

### **#24. Should Section 1222.21 be amended as follows: “The Administrator ~~may~~ shall waive the Performance Criteria...”**

*Decision:*

Amend Section 1222.21 as suggested (Option #2 from the Matrix).  
(Issue Resolved with full consensus)

**#29. Should the E&S exemption for “septic tanks lines and drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system” be retained to minimize costs for drainfield repair and replacement?** *(The current draft ordinance removes the exemption consistent with the Bay Act regulations.*

*Decision:*

Maintain the referenced exemption (Option #2 from the Matrix).

(Issue Resolved with full consensus)

**#39. Simplify the current draft Ordinance and related processes to the extent possible.**

*Decision:*

All processes in the ordinance should be re-reviewed with the goal to simplify all of them, for homeowners, developers, farmers, and staff.  
(22 out of 26 members present were in support, with no opposition)

**#2. Should the RPA be removed adjacent to wet ponds?**

*Decision:*

Exempt all stormwater management facilities (including wet and dry stormwater management facilities, farm ponds, and amenity ponds) from buffer areas.  
(18 of 25 members present in favor)

**#33. Is 100-foot buffer necessary in all circumstances? Should the buffer be reduced or increased based upon scientific data?**

*(The Current Draft Ordinance requires a 100-foot buffer adjacent to and landward of the Ordinary High Water Mark of perennial streams and connected wetlands).*

*Decision:*

Require only a 35-foot buffer with limited exemptions.  
(17 out of 24 members in favor)

There was broad agreement that exemptions could include such items as those listed below, although the group did not fully confirm the specific quantitative standards or definitions for such exemptions.

- a. Agriculture and rural economy uses and no-till activities, conditioned on having a nutrient management plan approved by the SWCD and implementation of no-till practices.
- b. Farm Ponds.
- c. Residential accessory structures in the RPA up to a cumulative total of 150 square feet in the landward portion of the buffer.
- d. Existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.
- e. Private roads, wetland restoration areas, septic fields, storm drains.
- f. Wet ponds.
- g. No un-funded mandates within the buffer.
- h. Planned/approved trail crossings of streams.
- i. Existing development.
- j. A reasonable amount of certain disturbances [such as required infrastructure elements].

**#9. Should the grandfathering policy require previously approved projects to meet the CBA regulations to the “greatest extent possible” or the “extent practicable”?**

*Decision:*

Remove the phrase “to the extent possible” in its entirety (14 out of 20 members in favor)

*[Also see decision on Issue #36]*

**#36. Should the Grandfathering policy be amended to allow approved projects to proceed as is?**

*Decision:*

Agreed to County Attorney’s language to grandfather “accepted and approved plans” with the removal of the qualifying phrase “to the greatest extent possible”, such that conformance to the new regulations would not be required.

(14 out of 20 members in favor)

**#1. How should the Resource Protection Area (RPA) be mapped?**

*Decision:*

Use the existing County RPA map of perennial streams (“the green line”) and do not require additional RPA delineations (Option 5 from the Matrix)

(15 out of 22 members in favor)

**#27. Should buffer encroachments be authorized in the Route 28 Tax District and other designated areas targeted for economic development? Should these areas be designated IDAs?**

*Decision:*

Recommend that buffer encroachments in the Rt. 28 Tax District and other designated areas targeted for economic development be authorized.  
(16 out of 26 members present in favor)

(Note that this tally did not garner the required 2/3 super-majority of members present to constitute consent. As with tallies on some other issue propositions, some members present abstained. Refer to the meeting notes for more detail on tallies.)

**b. Unresolved Issues**

(Issues that were either not addressed or not affirmed)

Two main sets of issues were not resolved.

1. The specific exemptions and waivers from the RPA buffer proposed - Issue #33 (buffer requirements adjacent to RPAs). As noted above, the group identified the kinds of features that would be exempt, including items identified in Issues #5, 7, 14, 15, 16, but did not fully confirm the specific quantitative standards or definitions for such exemptions.
2. Issues #3, #8, and #20, relating to the mapping of RMAs and the rules for septic tank pump-outs and thresholds for Erosion and Sediment control measures.

Also, issue #34 (exemption of HOA-owned properties from the RPA) was discussed and a potential legal issue was identified. The group acknowledged that it may not be possible to exempt properties or projects based solely upon ownership status.

**c. Summary of General Points of Agreement and Disagreement**

**Decision-Making Process.** The stakeholders managed to make significant progress in resolving a few of the major issues, and to fully resolve several minor issues. However, many issues remained unresolved.

More importantly, most major issues that were resolved did not achieve full consensus, meaning that there was significant opposition within the group even to those issues that were resolved by the majority of the group.

The group chose not to accept the facilitator's recommendation to require a consensus (general agreement) to settle a given issue, but instead chose to accept a super-majority (2/3 in favor) as a proxy for consensus.

*The advantage* to this approach was that it allowed the group to move forward on some difficult points of disagreement; but *the disadvantage* was that it left large segments of the group in opposition to various decisions taken by the majority.

**Fundamental Differences in Viewpoints.** Each participant would have his or her own view as to the type and extent of differences among the members. However, based upon the facilitator's observations during the seven meetings, two key differences seemed apparent, and these were serious impediments to achieving consensus among the participants:

1. *Definition of the Problem and Reliability of Data.* There were fundamental disagreements among various representatives about the basic scientific assumptions and data regarding the need for regulations to further protect

stream quality in the County, and about the effectiveness of various types and widths of buffers and other types of measures for protecting water quality.

Thus, the group did not agree on the "definition of the problem." Without a common understanding of what the problem is, it proved to be very difficult to agree on what the solution should be.

2. *Responsibility for Protecting Water Quality.* There appeared to be some fundamental disagreement about how much of a water quality problem the County has, who is responsible for protecting water quality in the County, and who should bear the burden of any additional protection. Some members placed the highest priority on protecting water quality, based on the belief that the scientific evidence for the proposed regulations is generally correct, and that the regulations are reasonable and necessary. Other members felt that less restrictive and/or voluntary measures would suffice, based in part on concerns that the scientific evidence for more restrictive measures is not compelling and the burden or impact on landowners could be excessive.

Again, without first reaching some common ground about the philosophy of regulation and the balance between public vs. private responsibility, it was difficult to resolve detailed regulatory proposals.

Yet it should be acknowledged that progress was made on several important issues in ways that begin to narrow the gap between the original draft ordinance amendments and the wishes of the majority of the stakeholders.

**Process Concerns.** Although the stakeholders affirmed their procedural ground rules, several process issues lingered as points of contention or concern.

- Some representatives wanted the group to go on record in opposition to the entire set of draft amendments, as a whole, regardless of any provision that might mitigate the impacts on landowners.
- Some representatives felt the process had gone off track because the group did not respond directly to the Board of Supervisors' directive to find flexible solutions within the parameters of the Chesapeake Bay Preservation Act.
- Related to the above concern, some representatives felt that by recommending 35-foot RPA buffers with extensive exemptions, the stakeholders had failed to consider ways to make the 100-foot buffers proposed in the original draft more workable, as implied by the Board's directive.
- A number of representatives were unable to provide input that represented the views of their own constituencies, either:
  - because there was insufficient time between meetings for consultation with their own group about specific issues and options; or
  - because their own group could not reach consensus among themselves.

### **3. General Description of the Meeting Process**

**Stakeholder Participant List.** The Board of Supervisors directed that one representative each from the following groups be named to the stakeholder group:

- Facilities Standards Manual Public Review Committee (PRC)
- Water Resources Technical Advisory Committee (WRTAC)
- Loudoun Watershed Management Stakeholder Steering Committee (WMSSC)
- Rural Economic Development Council (REDC)
- Agricultural District Advisory Committee (ADAC)
- Loudoun Soil and Water Conservation District (SWCD)
- Agricultural Summit Group
- Wetland Workgroup
- Piedmont Environmental Council (PEC)
- National Association of Industrial and Office Properties (NAIOP)
- Northern Virginia Building Industry Association (NVBIA)
- Loudoun County Chamber of Commerce (LCCC)
- Loudoun County Economic Development Commission (EDC)
- Loudoun Wildlife Conservancy (LWC)
- Dulles Area Association of Realtors (DAAR)
- Homeowners Associations (HOAs) – including a list of those who had weighed in already was compiled, and any additional homeowner association that was interested.

The final constitution of the group included 37 members.

*Note that a full list of stakeholder groups and their individual representatives in this process is attached as Appendix B of this report.*

At the request of some of the groups, and in light of the compressed time schedule for this work, the County staff accepted the concept of allowing each group to appoint an alternate representative who would attend when the primary member was unable to do so.

**Schedule and Form of Meetings.** The stakeholder group met seven times during a five-week period. All meetings were held in the County Board of Supervisors Meeting Room except for the initial meeting which was at Ida Lee Park. The first meeting lasted two hours, and by the decision of the stakeholders, the remaining meetings lasted three hours each.

The meetings were held on the following dates in 2010: November 9, 16, and 30; and December 2, 7, 9, and 14.

The typical attendance at meetings was consistently about 25 members, including a reasonable distribution among the various stakeholder groups that had named representatives. The total amount of face-to-face contact of the group at the seven meetings was 20 hours; thus, at least 500 person-hours of time were donated by these citizen participants to this process. This is in addition to the time spent preparing for meetings.

The number, dates, and length of meetings were all determined by the group at its first meeting. Also at the first meeting, the facilitator recommended a set of “ground rules” or protocols for working together and making decisions. The group affirmed these protocols after making some refinements, and refined them further at the third meeting. *(Note that the adopted ground rules are attached as an appendix to this summary report).*

At the outset, the facilitator affirmed that the basic directive of the Board of Supervisors included:



- *Time Frame* (The Board's deadline of receiving stakeholder input by its second business meeting in January meant that the work period of stakeholders had to end no later than December 20, 2010, to allow time for final review of the Issues Matrix and for packet materials to be prepared in time for that Board meeting). At various times during the first few meetings, several members expressed their desire for more time to deliberate, objecting to the tight time frame imposed by the Board. Several propositions to ask the Board for more time did not receive approval from the group as a whole.
- *Objective* (identify options that provided flexibility within the Chesapeake Bay Act)
- *Groups Represented* (the list of groups was named by the Board, but the individual representatives were selected by each group itself).

The facilitator further noted that:

- The facilitator's role was neutral and solely aimed at helping the stakeholders have a productive discussion.
- The recommended ground rules were solely dependent upon acceptance by the group, with any modifications desired.
- In addition, the staff provided a liberal interpretation to allow the alternate representatives, although this was not specifically provided by the Board.

**County Staff Role.** As established at the beginning of the process, the staff provided technical information regarding the content and basis of the existing draft ordinance, and provided additional information at the request of stakeholders to the extent feasible between meetings. Staff also served as a

clearinghouse for communications among the representatives and coordinator of logistics for the meetings.

***Substance of the Meetings.*** The *first meeting* was devoted to establishing a schedule and ground rules, and identifying additional issues to add to the original list of issues shown on an "Issues Matrix" prepared by County staff.

At the *second meeting*, the stakeholders evaluated the list of issues, identified which ones were major, and resolved several of the less difficult issues by full consensus. (*A fully updated Issues Matrix is included in Section 4 of this report*).

The remaining meetings were devoted mainly to working toward resolution of the major issues.

#### 4. Completed, Updated Issues Matrix.

*Note: Specific decisions taken by the Stakeholder Representatives through December 14 are shown in blue font in the right hand column, along with key comments. Only specific decisions are shown; the indirect or “de facto” affect of those decisions on other issues in the matrix have not been determined and are not shown here.*

*Also note that this matrix does not include staff recommendations which have been prepared under separate cover to be submitted to the Board of Supervisors in conjunction with this report.*

No.	ISSUE DESCRIPTION/ CURRENT DRAFT ORDINANCE	OPTIONS	ORIGINAL STAFF COMMENTS	STAKEHOLDER COMMENTS AND ACTION Thru 12-14-10
A.	MAP ISSUES			
1.	<p><b>How should the Resource Protection Area (RPA) be mapped?</b></p> <p>The draft Chesapeake Bay Preservation Area Map (“the Map”) is general in nature and is not intended to depict the specific extent of the RPA. The Map is estimated to capture two-thirds of the perennial streams in the County, and does not depict any connected wetlands. The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb 2,500 sf. There is concern regarding the added cost to the landowner to perform the site-specific RPA delineation.</p> <p><b>Current Draft Ordinance:</b> Requires applicants to submit site-specific RPA delineations</p>	<p><b>1. Retain the current draft Ordinance/Map.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb more than 2,500 sf.</li> <li>Additional costs to applicants for projects that disturb more than 2,500 sf of land, particularly individual homeowners and farmers, for consultant fees to prepare the site-specific RPA delineations.</li> <li>Ensures that all perennial streams and connected wetland are identified and protected for projects that disturb more than 2,500 sf of land.</li> </ul> <p><b>2. Hire a consultant to identify all perennial streams in the County.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Identifies and protects the estimated</li> </ul>	<p>Staff can support Option #5 pending additional discussion with the stakeholders.</p> <p>Note: The Transportation/Land Use Committee will be reviewing information regarding the mapping of perennial streams.</p>	<p><b>11-16-10 Triage of Issues:</b> Loudoun Valley Estates (LVE) #5 &amp; #6 PEC #6 FSM #5 &amp; #6 NAIOP Major Issue REDC #6 EDC Connected Wetlands</p> <p><b>Decision Taken 12-2-10:</b></p> <p>Prefer existing County RPA map of perennial streams (“the green line”) with no additional delineations (Option 5) (15 out of 22 members in favor)</p> <p>Key issues discussed:</p> <ul style="list-style-type: none"> <li>Balancing the desire to include all perennial streams, with the difficulty and cost of obtaining reliable data to identify such streams (staff estimates that about 2/3 of all perennial streams are shown on the current map base).</li> <li>Cost of delineation to the county; cost of delineation to the landowner.</li> <li>Balancing cost impacts on different</li> </ul>

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	for land disturbance over 2,500 square feet (sf) to verify the location of perennial water bodies and connected wetlands. The RPA includes a 100-foot buffer measured 100 feet from the ordinary high water mark (e.g., stream bank) of each side of a perennial water body and from any connected wetlands. The Map is used for identifying the limits of the RPA for single-family detached dwellings and associated accessory structures and agricultural structures that disturb 2,500 sf or less of land without a site-specific RPA delineation.	<p>one-third of the perennial streams that have not been identified and mapped.</p> <ul style="list-style-type: none"> <li>Provides a cost reduction for applicants required to perform site-specific RPA delineation, due to the fact that only connected wetlands would need to be identified.</li> <li>Involves a substantial fiscal impact – that in some cases would be unnecessary, as perennial streams would only need to mapped for projects that disturb more than 2,500 sf, based on the current draft Ordinance.</li> <li>Cannot be implemented without permission from landowners to access properties to analyze streams.</li> <li>Would not identify connected wetlands, resulting in the continued requirement for site-specific delineations for projects greater than 2,500 sf, as required by the current draft Ordinance. It would be cost-prohibitive for the County to map all connected wetlands.</li> </ul> <p><b>3. Offer property owners the option of having County staff conduct the site-specific RPA delineations for single family detached dwellings, associated accessory structures, and agricultural structures.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Reduces or eliminates the cost of the RPA delineation for landowners.</li> <li>Would likely require additional resources, to include a wetland</li> </ul>		<p>types of landowners – homeowners, farmers, developers.</p> <ul style="list-style-type: none"> <li>– Level of accuracy/amount of built-in error in defining perennial streams.</li> <li>– Process, cost, and timing of delineations and of exemptions/waivers.</li> <li>– Area of land disturbance allowed before site delineation is required.</li> </ul>

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		<p>specialist, which would have budget implications.</p> <p><b>4. Map the RPA by using a minimum drainage area where the 100-foot RPA buffer would be required.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Eliminates uncertainty as to the presence of the 100-foot RPA Buffer.</li> <li>• There is no scientific data to support a connection between any particular size drainage area and the perennality of a stream.</li> <li>• This would result in the RPA buffer being required adjacent to some intermittent streams and would exclude some perennial streams from being buffered.(Staff notes that the public hearing notice indicated that the proposed ordinance would relate to perennial water bodies, with no mention of intermittent streams.)</li> <li>• Connected wetlands would not be identified and protected.</li> <li>• Mapping drainage area to streams in Eastern Loudoun where piped drainage predominates would be difficult and may result in the need to require drainage area studies to be performed by applicants, reducing the level of desired certainty and increasing the cost to applicants.</li> </ul> <p><b>5. Use the RPA as currently mapped and do not require additional RPA delineations.</b></p>		

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		<p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Eliminates uncertainty as to the presence of the 100-foot RPA Buffer.</li> <li>Eliminates costs associated with the site-specific RPA delineation.</li> <li>An estimated one-third of the perennial streams (and existing planted buffers) in the County would not be identified and would remain unprotected.</li> <li>Connected wetlands would not be identified and would remain unprotected.</li> </ul> <p>6. <b>Use the RPA as currently mapped and require additional RPA delineations for specified application types (e.g., ZMAP, SPEX, SBPL, CPAP, STPL, specified grading permits).</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Eliminates uncertainty as to the presence of the 100-foot RPA Buffer for homeowners and farmers.</li> <li>Perennial streams and connected wetlands would be identified and protected in conjunction with the specified land development applications.</li> </ul>		
<b>2.</b>	<p><b>Should the RPA be removed adjacent to wet ponds?</b></p> <p><b>Current Draft Ordinance:</b> Removes the RPA only when adjacent to Stormwater Management Ponds that have been designed to provide water</p>	<p><b>1. Retain current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The RPA surrounding wet amenity ponds provides water quality treatment to sustain the physical integrity of the pond and aquatic life.</li> </ul>	Staff can support Option #3, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>LVE Proffers require a buffer. REDC #3 w/Minor Modification PEC #2 w/Minor Modification Major Issue – most of the RPA falls adjacent to wet ponds.</p>

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	<p>quality treatment consistent with guidance from the Department of Conservation and Recreation (DCR).</p> <p>DCR has promulgated guidance clarifying that wet stormwater management facilities (lakes, ponds, and other impoundments) are exempt from classification as a water body with perennial flow, except in cases where the size of the facility exceeds stormwater management requirements. In the latter situation, the facility is considered to be an amenity and is treated as a water body with perennial flow (with an associated RPA)</p>	<ul style="list-style-type: none"> <li>This proposal is reflected in the September 21, 2010 Map.</li> </ul> <p><b>2. Remove the RPA adjacent to those wet ponds that are the subject of a stormwater maintenance agreement with the County pursuant to Chapter 1096 of the Codified Ordinances.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Wet ponds subject to agreements are maintained by the County to ensure ongoing pollutant removal efficiency.</li> <li>This would reduce the number of wet ponds included in the RPA as originally proposed, but would increase the number of wet ponds included in the RPA as of September 21, 2010.</li> </ul> <p><b>3. Remove the RPA adjacent to all wet ponds.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Allows improvements to be constructed within the RPA, resulting in additional disturbances and water quality impacts. These ponds would be constructed in adherence to requirements (i.e. erosion and sediment control).</li> </ul>		<p>Comments and discussion 12-14-10:</p> <ul style="list-style-type: none"> <li>It was noted that staff supported removing wet ponds from buffer areas.</li> <li>Does this include farm ponds?</li> <li>Does this include dry ponds?</li> <li>Does this include all stormwater management facilities?</li> <li>Need to deal with old dry ponds that are problems for water quality.</li> <li>Maintenance of ponds is an issue.</li> </ul> <p><b>Decision taken 12-14-10:</b></p> <p>Selected a new option to remove the RPA adjacent to all existing ponds, including wet and dry stormwater management ponds and farm ponds. (18 out of 25 members present in favor)</p>
3.	<p><b>Should the Resource Management Area (RMA) be eliminated?</b></p> <p><b>Current Draft Ordinance:</b> Currently, the entire County (except Towns) that is outside of the RPA is mapped as RMA.</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Map the RMA only in areas that are known to have environmentally sensitive features (e.g., floodplains, highly erodible soils including steep slopes, highly permeable soils, nontidal wetlands not included in the RPA, and such other lands considered by the</b></p>	<p>Staff can support Option #1 or #3, pending additional discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>LVE #3 PEC #1 or #3 Goose Creek Community Association#3 EDC #3</p> <p>Stakeholders did not take action on this issue.</p>

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	<p>The following requirements are applicable within the RMA:</p> <p>1) Requires pumping out traditional septic systems once every five years and/or documentation of inspection of alternative systems; and</p> <p>2) Grading permit (E&amp;S controls) for projects that exceed 2,500 sf of land disturbance (reduced from 5,000 sf for commercial, industrial, single family attached, and multifamily projects and 10,000 sf for other projects).</p>	<p><b>local government to be necessary to protect the quality of state waters).</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• The pump-out and grading permit would not be required on land outside the RMA.</li> <li>• There is very little land area that would not be encompassed by the RMA when all environmentally sensitive features are mapped.</li> <li>• There would be two standards; one for areas within the RMA and one for areas outside of the RMA, which would increase the complexity of the program for applicants and staff.</li> <li>• The jurisdiction-wide RMA provides regional consistency with Prince William County and Fairfax County.</li> </ul> <p><b>3. Eliminate the RMA and amend the land disturbance threshold in the Erosion Control Ordinance and require the five-year pump-out and or documentation of inspection of alternative systems in the Codified Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• This option would require additional amendments to be drafted and processed in a case where the current amendments achieve the same goal.</li> </ul>		
4.	<b>Should the Draft RPA Screening Tool be eliminated? (RMA/Possible RPA identified in yellow).</b>	<p><b>1. Retain the current Screening Tool.</b></p> <p><b>2. Eliminate the Screening Tool.</b></p>	Staff supports Option #2, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p><a href="#">Option #2 – Issue Resolved.</a></p>

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	<p>A concern has been the expressed regarding the potential effect of the Screening Tool on property values and the ability to sell a property, as it identifies parcels that may contain RPA. There is also a concern that the total area depicted on the Screening Tool as “RMA/Possible RPA” may be designated as RPA in the future.</p> <p><b>Current Screening Tool:</b> The current screening tool was proposed to be used by Staff to identify areas of the County where an RPA delineation would be required in conjunction with certain residential and agricultural grading permit applications. Under the Current Draft Ordinance, an RPA delineation would be required for grading permits for single family detached dwellings and associated accessory structures and agricultural structures proposing land disturbance greater than 2,500 sf, where any portion of the land disturbance is located within 200 feet of a stream or water body that has the potential to be perennial. The intent of the tool was to eliminate the need to perform an RPA delineation in conjunction with these residential and</p>	<p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>•The elimination of the draft RPA Screening Tool Map would alleviate concerns regarding the potential negative implications on individual properties.</li> <li>•This would eliminate the concern regarding the total area depicted on the Screening Tool being designated as RPA in the future.</li> <li>•Property owners would not have a visual representation of where the Administrator could waive the RPA delineation as outlined in the Ordinance.</li> </ul>		



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	<p>agricultural grading permit applications if all of the land disturbance would be located further than 200 feet from a surface drainage feature.</p> <p>Without the Screening Tool, the Administrator could still waive the RPA delineation for any project that disturbs more than 2,500 sf, where there are no streams or water bodies with the potential to be characterized as a water body with perennial flow, located within the limits of land disturbing activity, nor within 200 feet of the limits of land disturbing activity, as defined in Section 1222.08(a).</p>			
<b>B.</b>	<b>ACCESSORY STRUCTURES</b>			
<b>5.</b>	<p><b>Should accessory residential structures be exempt from the CBPO requirements?</b></p> <p><b>Current Draft Ordinance:</b> Approval from the Chesapeake Bay Review Board is required to locate a detached accessory structure of any size in the RPA. If located in the landward 50 feet of the RPA, a Minor Water Quality Impact Assessment (WQIA) is required. If located in the Seaward 50 feet of the RPA, a Major WQIA is required. Thus, the current Ordinance provides an incentive to locate</p>	<p>1. <b>Retain the current draft Ordinance.</b></p> <p>2. <b>Exempt one residential accessory structure up to 150 square feet in size in the RPA per lot.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• This option would eliminate the costs associated with County review and approval of the referenced improvements.</li> <li>• This option would not require a Water Quality Impact Assessment and the accompanying mitigation or approval of an RPA exception.</li> <li>• This will result in an incremental decrease in water quality when compared to the</li> </ul>	<p>Staff can support Option #3, pending additional discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>NAIOP may be tied to other issues and resolve itself with consideration of other issues. DAAR Similar to #2 (Fairfax County) WW Separate from other issues, geared toward sheds, as opposed to additions.</p> <p><b>Decision Taken 12-9-10:</b></p> <p>As part of the discussion of buffer widths, stakeholders expressed general support for exempting residential accessory structures up to 150 sf, but did not select a specific option. They also suggested that exemptions more than 150 sf in the</p>

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	the structure farther away from perennial water bodies.	<p>current draft ordinance due to the removal of vegetation within the buffer and the establishment of impervious cover.</p> <ul style="list-style-type: none"> <li>Existing structures within the RPA would be grandfathered, but would be counted toward the 150 sf exemption.</li> <li>The option as proposed does not incentivize the location of the structure farther away from the perennial water body.</li> </ul> <p><b>3. Exempt residential accessory structures in the RPA with a cumulative footprint and disturbance of up to 150 sf per lot inclusive of existing accessory structures in the RPA.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Same considerations as Option 2.</li> <li>This option allows multiple accessory structures with a total cumulative footprint of 150 sf per lot.</li> </ul>		<p>landward portion of the buffer be considered.</p> <p>(14 out of 20 in favor)</p>
6.	<p><b>Should the construction of accessory structures and uses, such as parking areas, be approved by an administrative waiver?</b></p> <p><b>Current Draft Ordinance:</b> Accessory structures are permitted in the RPA with the approval of an RPA exception approved by the Chesapeake Bay Review Board following public notice and public hearing.</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Allow for the stated uses to be approved by an administrative waiver.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Accessory uses such as parking areas introduce additional types of pollution into the RPA, such as pollutants originating from vehicles.</li> </ul>	Staff can support Option 2, provided that specific performance standards are included (i.e. parking areas limited to a certain size).	<p><b>11-16-10 Triage of Issues:</b></p> <p>FSM What is an Administrative Waiver? (WQIA w/staff review). NVBIA Major Issue. EDC Administrative Waiver, but incorporate performance-based criteria in lieu of WQIA.</p> <p>Stakeholders did not take action on this issue.</p>

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7.	<p><b>Should multiple accessory structures with a cumulative footprint up to 2,500 sf be approved by an administrative waiver, as opposed to an exception, similar to minor additions?</b></p> <p><b>Current Draft Ordinance:</b> Construction of detached accessory structures in the RPA requires the approval of an exception by the Chesapeake Bay Review Board following public notice and a public hearing.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Include accessory structures in the allowance for adding up to 2,500 square feet of impervious area to existing uses in the RPA [see Section 1222.20(a)(i)] by modifying Section 1222.20(c) so as to only require an RPA exception (versus an RPA waiver, which is administrative) for when the cumulative impervious area increases after the adoption date exceeds 2,500 square feet.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The proposed amendment to Section 1222.20(a)(i) could result in the disturbance of the entire landward 50-feet of the RPA buffer on smaller residential lots. Given that this may be the entire extent of the RPA on these lots, there will be limited opportunities to provide the requisite mitigation on the subject property.</li> <li>The proposed amendment to Section 1222.20(c) would contradict the corresponding amendment to Section 1222.20(a)(i) by allowing disturbances for accessory structures with a cumulative impervious area up to 2,500 square anywhere in the buffer, including the seaward 50-feet, by administrative waiver.</li> </ul>	<p>Staff can support Option 2, provided that specific performance standards are included.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>NAIOP no connection to the amount of RPA on the parcel. Increase sf with increased sf of RPA on the lot. % impervious area on parcel permitted within the RPA. EDC Performance-Based Criteria. LVE alternative language.</p> <p><b>Decision Taken 12-9-10:</b></p> <p>As part of the discussion of buffer widths, stakeholders expressed general support for exempting residential accessory structures on existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.</p> <p>(14 out of 20 in favor)</p>
<b>C.</b>	<b>E &amp; S THRESHOLDS</b>			
8.	<p><b>Should the proposed land disturbance threshold that triggers the requirement for a grading permit (E&amp;S control measures) be increased from the currently proposed 2,500 sf?</b></p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Retain the existing 10,000 sf threshold for agricultural structures and retain the proposed 2,500 sf threshold for all other applicable land disturbing activities.</p>	<p>Staff can support Option #2, pending additional discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>REDC #2. Broad Run Farms Civic Association (BRF) 10,000 sf for everything. Increases threshold for multifamily, SFD, commercial, industrial.</p>

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	<p>A concern has been expressed that lowering the land disturbance threshold to 2,500 sf would result in an economic burden on the agricultural community and would have a negative impact on the rural economy.</p> <p><b>Current Draft Ordinance:</b> The draft regulations propose to reduce the land disturbance threshold requiring a grading permit from 5,000 sf for commercial, industrial, single family attached, and multifamily projects; and 10,000 sf for all other projects, to 2,500 sf for all projects.</p>	<p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Would reduce the cost to farmers to submit grading permit applications.</li> <li>• Would result in a minimal reduction in the level of water quality protection compared to the current draft Ordinance due to the fact that E&amp;S controls would not be implemented in conjunction with land disturbances greater than 2,500 sf, up to 10,000 sf.</li> </ul> <p><b>3. Retain all existing land disturbance thresholds.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• This option would not afford any additional water quality protection beyond existing requirements.</li> </ul>		<p>NAIOP #3. Ag Summit 10,000 sf agriculture, 5,000 sf for commercial facilities. PEC Major Issue.</p> <p>Stakeholders did not take action on this issue.</p>
<b>D.</b>	<b>GRANDFATHERING</b>			
9.	<p><b>Should the grandfathering policy require previously approved projects to meet the CBA regulations to the “greatest extent possible” or the “extent practicable”?</b></p> <p><b>Current Draft Grandfathering Policy:</b> The current Draft Grandfathering Policy requires pending plans to comply with the Ordinance to the “greatest extent possible” consistent with Opinions of the Attorney General and with Section 15.2-2261 of the Virginia Code, which states:</p>	<p><b>1. Retain the current draft Grandfathering Policy.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements.</li> </ul> <p><b>2. Amend the current draft Grandfathering Policy to read “extent practicable.”</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Would introduce cost as a factor in determining the level of required</li> </ul>	<p>Staff can support Option #3, pending additional discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>PEC How does extent practicable differ from extent possible? LVE Conflicts with proffers can’t be overridden. (Proffers are extension of the Zoning Regulations). NAIOP Concept Plan Amendments? (Not required). NVBIA Grandfather all approved projects (Issue #36) PEC Vested projects identified in Virginia Code. Major Issue.</p> <p>Decision Taken 12-9-10 in regard to Issue #36 removes the phrase “to the</p>

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	<p><i>“Nothing contained in this section shall be construed to affect ... (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the <b><u>greatest extent possible</u></b>, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ <a href="#">10.1-2100 et seq.</a>).”</i></p>	<p>compliance.</p> <ul style="list-style-type: none"> <li>Has the potential to reduce the water quality benefits obtained by implementation of the Ordinance.</li> <li>The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements.</li> </ul> <p><b>3. Amend the current draft Grandfathering Policy to read “extent possible.”</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>This change offers a compromise solution consistent with the Fairfax County policy that does not reduce the water quality benefit obtained by implementation of the Ordinance.</li> </ul>		<p>extent possible” in its entirety (14 out of 20 in favor)</p> <p><i>[Also see decision on Issue #36]</i></p>
10.	<p><b>Should Section 7(b) of the draft Grandfathering Policy be amended such that compliance with the regulations would not be required if it would result in the following:</b></p> <p>(iv) a change in housing type or significant change in lot size,</p> <p>(v) a change in the type of use (i.e., surface parking to structured, one-story building to multi-story), or</p> <p>(vi) a substantial modification to the land plan if said plan was proffered”?</p>	<p><b>1. Retain the current draft Grandfathering Policy.</b></p> <p><b>2. Amend the current draft Grandfathering Policy by adding 7.b.(iv) to provide that compliance would not be required if it would result in a change in housing type to include, but not limited to, changes in housing type from single family detached to multifamily.</b></p> <p><b>3. Amend the current draft Grandfathering Policy to provide that compliance would not be required if it would result in a significant change in lot size.</b></p>	<p>Staff seeks additional discussion and clarification from the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>FSM Issue #9 &amp; #10 Major Issue – Dedicate a Meeting to the topic. PEC Agrees. NAIOP Explain Pending Plans.</p> <p><i>Stakeholders did not take action on this issue and did not provide additional clarification for staff.</i></p>

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	<p><b>Current Draft Grandfathering Policy:</b> The current Draft Grandfathering Policy requires an RPA delineation to be performed for pending plans and requires these plans to meet the Ordinance requirements to the greatest extent possible. The policy also allows pending plans to encroach into the RPA without the approval of an RPA exception.</p>	<p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>This change would prevent consideration and discussion of a change from a traditional grid development to a cluster development as a potential approach, without loss of density, to avoid impacts to the RPA.</li> </ul> <p><b>4. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a change in the type of use (i.e., surface parking to structured, one-story building to multi-story.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>This change would preclude the consideration and discussion of vertical integration as a potential approach to avoid impacts to the RPA, which may be appropriate at certain densities in certain zoning districts.</li> </ul> <p><b>5. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a substantial modification to the land plan if said plan was proffered.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>This provision is already included in the Current Draft Grandfathering Policy as Item 7(a).</li> </ul>		
<b>E.</b>	<b>DEFINITIONS (CBPO Section 1222.05)</b>			
<b>11.</b>	<b>Should the definition of “Best Management Practices” be revised as follows: “...a practice</b>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Change the definition as proposed.</b></li> </ol>	Staff can support Option #2, pending additional discussion with the	<p><b>11-16-10 Triage of Issues:</b></p> <p>FSM “most” or “best” is ambiguous,</p>

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	<p><b>or combination of practices that are <del>the most an</del> effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals?”</b></p> <p><b>Current Draft Ordinance:</b> The draft ordinance includes an amended definition recommended by the Planning Commission Subcommittee and the Planning Commission:</p> <p><i>“Best Management Practice” or “BMP” means a practice or combination of practices that are the most effective, <del>and practical</del> practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals.</i></p>	<p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The language is not consistent with the agricultural BMP requirements outlined in Section 1222.15, which require the BMP that addresses the <u>more</u> predominant water quality issue, as opposed to <u>a</u> predominant water quality issue.</li> <li>“Most effective” is consistent with the BMP definition in the Revised 1993 Zoning Ordinance.</li> </ul>	<p>stakeholders.</p>	<p>lacks detail. LVE #2. BRF What are established water quality goals of the CBPO? (Outlined in State Regulations). Lees Crossing (LC) How is effective quantified? Applies to agriculture in CBPO. No-till may not be as effective due to the need for chemical application. Ag Summit Weigh in at next meeting. NAIOP Wordsmithing issue.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>
12.	<p><b>Should the definition of “Plan of Development” be revised to exclude Concept Development Plans and Preliminary Subdivisions, with the intent of not requiring site specific RPA delineations for such applications?</b></p> <p><b>Current Draft Ordinance:</b> Concept Development Plans and</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Identifying the RPA at the time of rezoning, special exception, and preliminary plat ensures full compliance with the ordinance.</li> </ul> <p><b>2. Change the definition as proposed.</b></p> <p><u>Considerations:</u></p>	<p>Staff supports Option #1, pending additional discussion with the stakeholders.</p> <p>It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>PEC Option #1. Contingent on Issue #1. NAIOP Contingent on Issue #1. Industry concern is level of cost and expense at early stage in development. If RPA were more definitive, this would be less of an issue.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>



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	Preliminary Subdivision Plats are included in the definition of Plan of Development.	<ul style="list-style-type: none"> <li>The RPA delineation is necessary at the time of rezoning, special exception, and preliminary plat to determine the extent of the RPA and to identify whether or not an exception is needed. Not requiring this information would result in reduced water quality protection and the potential for substantial conformance issues later in the development process, which add delay and cost for the applicant, the Board, and staff</li> <li>This option results in the potential for the specified land development applications to depict encroachments into the RPA that would subsequently be grandfathered.</li> </ul>		
13.	<p><b>Should the definition of “Redevelopment” be revised?</b></p> <p><b>Current Draft Ordinance:</b> The draft ordinance includes an amended definition recommended by the Planning Commission:</p> <p><i>“Redevelopment” means the process of developing land <del>in the same physical location</del>, that is or has been previously developed, <del>where there is no increase in the amount of impervious cover and no further encroachment into the Resource Protection Area.</del></i></p> <p>Section 1222.12(b) states:</p> <p>Redevelopment, provided that: there is no increase in the amount of impervious cover, it is in the same physical location,</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Definition.</b></li> <li><b>Revise as follows: “Redevelopment”</b> <u>means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.</u></li> </ol> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>There are no prohibitions on redevelopment within the RMA, thus there is no need to provide language relative to redevelopment within the</li> </ul>	Staff seeks additional clarification from the stakeholders regarding the suggested amendment in Option 2.	<p><b>11-16-10 Triage of Issues:</b></p> <p>FSM IDA (Intensely Developed Area) is new term. Issue #27. Changes the Zoning Ordinance definition of redevelopment. (Does not change the Zoning Ordinance definition. The definition is only applicable to CBPO.)</p> <p>BRF Big Issue</p> <p>EDC May not be an issue if there are other permissible encroachments into the RPA.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification for staff.</p>



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	<p>there is no further encroachment into the RPA, and it conforms with the Erosion and Sediment Control and Stormwater Management Requirements outlined in Section 1222.17.</p> <p>The <u>Revised General Plan</u> defines redevelopment as "A change in land use which would involve the removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of land from which previous improvements have been removed. Redevelopment should be compatible with adjacent properties and occur with input and involvement from the community."</p>	RMA.		
<b>F.</b>	<b>EXEMPT USES (CBPO Section 1222.11)</b>			
<b>14.</b>	<p><b>Should “private roads” and “private driveways” be added to the list of exempt uses?</b></p> <p><b>Current Draft Ordinance:</b> Private roads and driveways are listed as permitted uses in Section 1222.C provided that:</p> <p>i. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway in or across the RPA;</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Include private roads and private driveways with public roads as exempt uses under Section 1222.11(d).</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Exempting private roads and driveways would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.</li> <li>While the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in</li> </ul>	Staff seeks further discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>PEC #1. LC Should we give opinions on each issue? (Yes.) NAIOP Major Issue Private Roads same as Public Roads in FSM? Ownership is only difference? LC Major Issue. LWC New construction or existing roads? (New construction, expansion of existing roads.)</p> <p><b>Decision Taken 12-9-10:</b></p>

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	<p>ii. The alignment and design of the private road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and</p> <p>iii. The design and construction of the private road or driveway satisfy all applicable Performance Criteria (Section 1222.17) and County Codes.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p>	<p>the RPA and minimize adverse effects on water quality would be required, private roads and private driveways would not require a finding that there is no reasonable alternative to aligning the private road or driveway in or across the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided.</p>		<p>As part of the discussion on buffer widths, stakeholders expressed general support for exempting private roads in addition to public roads, but expressed some concern regarding “conditional” exemptions (e.g., exemptions subject to certain conditions such as “minimize encroachment in the RPA and adverse effects on water quality”).</p> <p>(14 out of 20 stakeholders)</p>
<b>15.</b>	<p><b>Should “the construction, installation, operation, and maintenance of wetland restoration, wetland mitigation, stream restoration, and stream stabilization” be added to the list of exempt uses?</b></p> <p><b>Current Draft Ordinance:</b> Stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers are included in the definition of</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Include stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers as exempt uses under Section 1222.11.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Exempting mitigation projects would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.</li> <li>The exemption would not require conformance with local erosion and</li> </ul>	<p>Staff seeks further discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>LVE Potential conflict with Federal law. (No conflicts in other 84 Tidewater jurisdictions.) EDC Need to simplify ordinance for wetland mitigation. WW Option #2 – added cost is a disincentive. PEC Option #1.</p> <p><b>Decision Taken 12-9-10:</b></p> <p>Stakeholders expressed general support for exempting stream and wetland mitigation projects.</p> <p>(14 out of 20 stakeholders)</p>

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	<p>“water-dependent facility,” which is identified as a permitted use under Section 1222.12(a) provided that:</p> <ul style="list-style-type: none"> <li>i. It does not conflict with the Zoning Ordinance;</li> <li>ii. It complies with the Performance Criteria outlined in Section 1222.17;</li> <li>iii. Any non water-dependent component is located outside of the RPA; and</li> <li>iv. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.</li> </ul> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p>	<p>sediment control requirements (wetland mitigation projects can currently opt out of local review following the approval of annual erosion control specifications by the Virginia Department of Conservation and Recreation), would not require non water-dependent facilities to be located outside the RPA, and would not require that access to the facility minimize disturbance to the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided.</p>		
16.	<p><b>Should the following be added to the list of exempt uses in paragraph (e): the construction, installation, operation and maintenance of <u>connections to water wells and septic fields, sanitary sewer laterals and storm drains and</u></b></p>	<ol style="list-style-type: none"> <li><b>Retain the Current Draft Ordinance.</b></li> <li><b>Include septic field connections and storm drains and storm sewers and their outfall structures as exempt uses under Section 1222.11.</b></li> </ol> <p><u>Considerations:</u></p>	<p>Staff seeks further discussion with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>FSM Storm sewers and outfalls have to be located in the RPA. Option #2. EDC Option #2. Sewer main is allowed but lateral is not allowed. (Lateral is allowed. Septic connection is not.) NAIOP Wordsmithing, not a Major Issue.</p>

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	<p><b><u>storm sewers and their outfall structures?</u></b></p> <p><b>Current Draft Ordinance:</b> Wells (and associated connections) are currently exempt in the RPA. Outfall structures of storm drains and sewers are included under the definition of “water-dependent facility,” which is a permitted use in the RPA. Septic fields and septic laterals are only permitted in the RPA in conjunction with administrative waivers for the loss of a buildable area or by exception. The construction of sanitary sewer lines and laterals is exempt.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p>	<ul style="list-style-type: none"> <li>Exempting septic field connections and storm drains and storm sewers and their outfall structures would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.</li> <li>The exemption will result in additional disturbances within the RPA that could have otherwise have been avoided and eliminate the mitigation requirement.</li> </ul>		<p><b>Decision Taken 12-9-10:</b></p> <p>Stakeholders expressed general support for exempting storm drains.</p> <p>(14 out of 20 stakeholders)</p>
<b>G.</b>	<b>BUFFER AREA REQUIREMENTS (CBPO Section 1222.14)</b>			
<b>17.</b>	<p><b>Should Section 1222.14 (e) be removed, which requires that the full width of the Buffer Area be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses be removed? Is the maintenance of existing ground cover sufficient?</b></p> <p><b>Current Draft Ordinance:</b></p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The referenced section requires areas of the buffer that have been previously deforested by agricultural or silvicultural activities to be replanted at the time of development. The reforestation restores the function of the buffer prior to the development of the property.</li> </ul> <p><b>2. Remove Section 1222.12 (e).</b></p>	<p>Staff seeks further discussion and clarification with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>NAIOP Cost concern. Is fully forested buffer more functional than other types of vegetation?</p> <p>EDC Option #2. Costly. Term “change in use” is problematic. School project would require reforestation. Allow the area to naturally revegetate.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification for staff.</p>

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	Section 1222.14(e) requires the full width of the buffer area to be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses.	<u>Considerations:</u> <ul style="list-style-type: none"> <li>Removal of this requirement would significantly reduce the potential water quality improvement associated with the draft amendments and would result in the only required buffer planting to be associated with mitigation required in conjunction with permitted uses, administrative waivers, and exceptions for proposed disturbances within the RPA.</li> </ul>		
<b>H.</b>	<b>MINIMUM LOT SIZE (CBPO SECTION 1222.16)</b>			
<b>18.</b>	<p><b>Should the minimum distance between the RPA and the principal structure be reduced?</b></p> <p>It may be difficult to determine which yard (front, side, rear) would apply for odd shape lots.</p> <p><b>Current Draft Ordinance:</b> The minimum distance between the RPA and the principal structure on new residential lots shall be equal to the minimum corresponding required yard (front, side and rear) of the applicable zoning district to ensure useable lot area is maintained.</p>	<ol style="list-style-type: none"> <li><b>Retain the current distance to equal the minimum corresponding required yard (front, side and rear) of the applicable zoning district.</b></li> <li><b>Reduce the distance to 10 feet.</b></li> </ol> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Reduction in the setback increases the potential for minor additions to encroach into the RPA, resulting in additional disturbances to the RPA.</li> </ul>	Staff can support a fixed setback of a certain dimension, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>NVBIA Proposed the suggested change. Subordinate issue.</p> <p>FSM Does not necessarily have to be a 10-foot dimension. Issue is which yard is it on a curving lot?</p> <p>NAIOP Percentage of required yard has to be outside of the RPA (e.g., larger lots).</p> <p>PEC May need more than 10 feet, but support a fixed setback, not dependent upon the yard.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>
<b>I.</b>	<b>PERFORMANCE CRITERIA (CBPO 1222.17)</b>			
<b>19.</b>	<b>Should the Ordinance include the optional provision to allow</b>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Incorporate the plastic filter alternative</b></li> </ol>	Staff supports Option #1, pending additional	<b>11-16-10 Triage of Issues:</b>

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	<b>a plastic filter to be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield as an alternative to the mandatory pump-out?</b>	<b>to the mandatory pump-out.</b>  <u>Considerations:</u> <ul style="list-style-type: none"> <li>The Health Department has indicated that the plastic filter option is not recommended due to the fact that these devices tend to clog and are often removed, rather than replaced, once they stop functioning.</li> </ul>	discussion with the stakeholders	<p>PEC Option #1 due to Health Department concerns.</p> <p><a href="#">No opposition to Option #1. Issue Resolved.</a></p>
<b>20.</b>	<p><b>Should 1) the mandatory septic pump-out time frame be extended from five-years to a longer period of time, and/or 2) documentation that the system has been inspected and does not need to be pumped out, be added to reduce the financial burden of pumping systems that are not operating at full capacity (e.g., due to reduced occupancy)?</b></p> <p><b>Current Draft Ordinance:</b> The current draft ordinance requires conventional septic systems to be pumped out once every five years and alternative septic systems to be pumped or inspected.</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Amend the Ordinance to revise the pump-out time frame.</b>   <u>Considerations:</u> <ul style="list-style-type: none"> <li>The Health Department recommends that septic systems be maintained every 3-5 years.</li> <li>Improper maintenance can result in system failure and water quality pollution.</li> </ul> </li> <li><b>Amend the Ordinance to allow the option for inspection of conventional septic systems similar to alternative septic systems.</b>   <u>Considerations:</u> <ul style="list-style-type: none"> <li>The Health Department has indicated that the pump-out does not cost appreciably more than the inspection, minimizing the advantage of only performing an inspection.</li> <li>This option results in the potential for an inspection that identifies a system near capacity, for which documentation of</li> </ul> </li> </ol>	Staff supports Option #1, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>Ag Summit Don't support pump-out time frame. Should link to use. Does Option #3 address concerns? Recommend against a pump-out requirement. REDC Rate of failure? PEC Option #1. DAAR No monitoring for septic systems except at time of sale. Don't know if there is an issue? (1325 lb pound Nitrogen reduction per year.) Staffing issue. Cost of pump-out? LC Previously proposed, determined not to be needed. Add Option #4 to eliminate the requirement. NAIOP Additional information. NVBIA Alternative recommendations for time frames? SWCD Some notification should be provided that pump-out is needed.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>

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		<p>the pump-out would not be required for the next five years.</p> <ul style="list-style-type: none"> <li>Improper maintenance can result in system failure and water quality pollution.</li> </ul>		
<b>J.</b>	<b>WATER QUALITY IMPACT ASSESSMENT (CBPO 1222.18)</b>			
<b>21.</b>	<p><b>Should the Water Quality Impact Assessment (WQIA) be modified so that a Major WQIA is not required for encroachments into the seaward 50 feet of the Buffer Area associated with smaller structures?</b></p> <p><b>Current Draft Ordinance:</b> The current draft ordinance requires a Major WQIA for disturbances in the seaward 50-feet of the RPA, which requires studies and plans from a consultant and engineer.</p> <p>The requirements have been structured such that an additional level of detail would be required for improvements proposed within the seaward 50-feet in order to pinpoint the limits of land disturbing activity in relation to the location of perennial water bodies, connected wetlands, and the 100-foot buffer.</p> <p>The current structure provides an incentive to locate structures outside of the seaward 50-feet of</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Amend the WQIA requirements for smaller structures.</b></li> </ol> <p>Considerations:</p> <ul style="list-style-type: none"> <li>Item #5 addresses exemptions of structures in the RPA up to a cumulative total of 150 sf. A WQIA is not required for exempt uses.</li> <li>This would remove the incentive to locate small structures outside of the seaward 50-feet of the buffer.</li> </ul>	<p>Staff seeks further discussion and clarification with the stakeholders.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>EDC Replace WQIA with performance-based standards. (Exempt uses don't require WQIA.)</p> <p>PEC Exemptions of other structures (#5) will affect the outcome. Major Issue.</p> <p>BRF Contingent upon #33.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>



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	the 100-foot buffer adjacent to perennial streams and water bodies consistent with the purpose of the ordinance.			
<b>K.</b>	<b>ADMINISTRATIVE WAIVER FOR LOSS OF BUILDABLE AREA (CBPO 1222.19)</b>			
<b>22.</b>	<p><b>Should the phrase “Buffer Area” be replaced with “RPA”?</b></p> <p><b>Current Draft Ordinance:</b> Section 1222.19 allows encroachment into the 100-foot Buffer Area, but not into the RPA itself, which includes connected wetlands.</p> <p>The waiver requires that encroachments into the Buffer Area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Amend Section 1222.19 to replace “Buffer Area” with “RPA.”</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Allows potential impacts to connected wetlands that would otherwise be protected by the application of the RPA requirements.</li> </ul>	Staff requests additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>EDC Same? WW Not into the core components? Only the buffer. Need clarification that wetland cannot be impacted by an Administrative Waiver, only buffer. Option #1. Clarify language.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>
<b>23.</b>	<p><b>Should the requirement for a Water Quality Impact Assessment be eliminated in Section 1222.19(a)vi to reduce costs to homeowners?</b></p> <p><b>Current Draft Ordinance:</b> Section 1222.19(a)vi. requires a Water Quality Impact Assessment to be submitted in conjunction with the waiver request. As currently drafted,</p>	<p><b>1. Retain the Current Draft Ordinance.</b></p> <p><b>2. Delete Section 1222.19(a)vi.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Eliminating the Water Quality Impact Assessment would eliminate the requirement for an RPA delineation to be performed for disturbances less than 2,500 square feet in the RPA.</li> <li>Eliminating the Water Quality Impact Assessment would remove the requirement</li> </ul>	Staff requests additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>WQIA is a major issue for discussion.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>



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	disturbances less than 2,500 square feet in the landward 50-feet of the RPA requires a Minor Water Quality Impact Assessment that can be prepared by the applicant without assistance from a consultant or engineer and staff can perform the RPA delineation.	to analyze water quality impacts and to mitigate proposed disturbances in the RPA beyond establishing a vegetated buffer equal to the area of encroachment on the lot or parcel.		
<b>L.</b>	<b>ADMINISTRATIVE WAIVER OF PERFORMANCE CRITERIA (CBPO SECTION 1222.21)</b>			
<b>24.</b>	<p><b>Should Section 1222.21 be amended as follows: The Administrator <del>may</del> shall waive the Performance Criteria . . .</b></p> <p>There concern is that there is an overly broad discretion vested in the Administrator when the criteria specified have been met.</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. Amend Section 1222.21 as suggested.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The Administrator may still deny the request.</li> </ul>	Staff supports Option #2, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>REDC Why wouldn't Administrator approve if met the findings? (Administrator would.)</p> <p><a href="#">Option #2. Issue Resolved.</a></p>
<b>M.</b>	<b>AGRICULTURE</b>			
<b>25.</b>	<p><b>Should the County actively fund programs to protect streams and wetlands in agricultural areas (current Federal and State funding is not enough) to:</b></p> <ol style="list-style-type: none"> <li>Fence out cattle from streams, springs, and wetlands with ideally 100 feet or more buffers and purchase perpetual easements on such areas;</li> <li>Install water systems for cattle in conjunction with such fencing; and</li> </ol>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Existing cost-share funding could be prioritized to assist with the implementation of the Ordinance.</li> </ul> <p><b>2. Pursue funding options for fencing livestock out of streams, installing alternative watering systems, and reforesting agricultural buffers.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The Transportation Land Use Committee (TLUC) initiated discussion of riparian buffer incentives during the</li> </ul>	The Transportation and Land Use Committee is currently exploring incentives for establishing and retaining riparian buffers, which includes the possible funding of various programs.	<p><b>11-16-10 Triage of Issues:</b></p> <p>WW Will this impact taxes? (TLUC item proposes allocation less than \$100,000.) REDC Cost to fund ag practices may be important to meet TMDL. Ag Summit Maintenance and replacement of fence is not covered. Pennsylvania has a fund for maintenance following catastrophic events. NAIOP Wait to see outcome of TLUC discussion. REDC Stakeholders could lend support to provide additional funding. LC Does this only regard funding? (Maintain or increase funding.)</p>

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	<p>3. Reforest these buffers with native herbaceous, shrubs and trees.</p> <p><b>Current Draft Ordinance:</b> Agricultural requirements are outlined in Section 1222.15. Installation of cropland Best Management Practices (BMPs) is required to offset 50-foot and 75-foot cropland encroachments into the 100-foot buffer. Grazing land BMPs (e.g., livestock fencing) would only be required where permanent vegetative cover cannot be maintained.</p>	<p>October 20, 2010 TLUC meeting.</p> <ul style="list-style-type: none"> <li>The Action Item for the October 20, 2010 TLUC meeting summarized existing and potential incentives to support implementation of the Ordinance requirements and to encourage implementation above and beyond the Ordinance requirements.</li> </ul>		<p>LVE Does this only benefit ag landowners? (Urban component also.) SWCD Administer State Cost-Share program that is currently voluntary. Ag land not in production is excluded. Damaged measures must be replaces or cost-share must be returned. May significantly affect agricultural production.</p> <p>NAIOP Economic impacts already identified in 84 Tidewater localities. Determine if it is an appropriate water quality option. Board may elect to provide additional funding to support implementation.</p> <p>DAAR Will voluntary adoption affect funding? (No link between adoption and funding).</p> <p>SWCD Need more financial support if participation becomes mandatory. Option #2.</p> <p>Stakeholders were forwarded all applicable reports to the BOS Transportation Land Use Committee, and meeting summaries from the applicable meetings. Stakeholders did not discuss the funding incentives under consideration by the Committee.</p>
<b>N.</b>	<b>APPEALS (CBPO SECTION 1222.24)</b>			
<b>26.</b>	<b>Should appeals of administrative decisions be processed by the Board of Supervisors, rather than the Chesapeake Bay Review Board (CBRB)?</b>	<p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.24 as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The members of the CBRB are required to</li> </ul>	Staff supports Option #1, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p>LVE Option #1 PEC Option #1. Provide PC discussion and why they chose to retain CBRB. EDC Why even have the CBRB? Item</p>

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	<p><b>Current Draft Ordinance:</b> Section 1222.24 is structured such that appeals of administrative decisions are reviewed by the CBRB.</p> <p>The issue is whether these decisions should be forwarded directly to the elected officials, who are accountable to the public, which will reduce time and court costs.</p>	<p>have demonstrated knowledge of and interest in environmental issues and represent diverse professions related to agriculture, land development, and the environment and are appointed by the Board of Supervisors.</p>		<p>#35 Administrative vs. Exceptions. BRF BOS. Ag Summit BOS. WW Appeal would take longer. BOS has a busier schedule.</p> <p>Stakeholders did not take action on this issue.</p>
<b>O.</b>	<b>INTENSELY DEVELOPED AREAS (IDAs)</b>			
27.	<p><b>Should buffer encroachments be authorized in the Route 28 Tax District and other designated areas targeted for economic development? Should these areas be designated IDAs?</b></p> <p><b>Current Draft Ordinance:</b> There are no buffer encroachments presently authorized within these areas. Encroachments into the buffer that are not otherwise permitted or exempt would require the approval of an administrative waiver or RPA exception. The Ordinance outlines the process for applying for an RPA exception, which requires the submission and review of a Water Quality Impact Assessment analyzing the water quality impacts of the proposed disturbance in the RPA and accompanying mitigation, to address proposed buffer reductions. Density credit is provided for land within the</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Authorize buffer encroachments for development within the Route 28 Tax District and other designated areas targeted for economic development.</b></li> </ol> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Would reduce costs associated with land development applications and maximize developable land area.</li> <li>• Additional costs would be associated with the requirement to identify perennial streams and the boundary of the RPA in addition to existing wetland delineation requirements and to obtain a waiver or RPA exception for disturbances in the RPA that are not otherwise exempt or permitted.</li> <li>• Significant areas of natural environment remain within the Route 28 Tax District, with 31 percent of the area being impervious based upon current Geographic Information System data.</li> </ul>	<p>Staff recommends that the potential impacts of the regulations on the Route 28 Tax District and other areas targeted for economic development be evaluated following the stakeholder recommendations for addressing the other issues in the matrix.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>PEC Major Issue. FSM Major Issue impacted by Grandfathering discussion.</p> <p>Discussion/comments 12-14-10 included:</p> <ul style="list-style-type: none"> <li>– This seems irrelevant.</li> <li>– IDA is a common provision for flexibility.</li> <li>– Rt. 28 district doesn't meet the IDA criteria.</li> <li>– Why single out this one area? Message is about the importance of economic development.</li> <li>– Send a message about water quality?</li> <li>– We've lost the balance of water quality and economic development.</li> <li>– Don't give tax breaks to big commercial users.</li> <li>– Many other urban areas do incorporate water quality standards.</li> </ul>

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	<p>RPA, as well as the Major Floodplain.</p> <p>The Route 28 Tax District was deemed not to meet the regulatory requirements to be designated as an Intensely Developed Area (IDA), which would allow reduction of the buffer. The IDA is intended to apply in cases where development has severely altered the natural state of the area such that at least one of the following conditions exist at the time of adoption: 1) there is more than 50 percent impervious surface; 2) public sewer and water systems or a constructed stormwater drainage, or both have been constructed (not planned) as of the local adoption date; or 3) housing density is equal to or greater than four dwelling units per acre.</p>	<ul style="list-style-type: none"> <li>Approximately 8 percent of parcels within the Route 28 Tax District contain RPA, compared to 10 percent Countywide.</li> <li>Approximately 58 percent of the RPA within the Route 28 Tax District falls within the Major Floodplain, where development is already limited by the Zoning Ordinance regulations of the Floodplain Overlay District.</li> <li>The addition of authorized buffer encroachments has the potential to significantly reduce the water quality protection afforded by the draft Ordinance, resulting in additional disturbances within the RPA that could have otherwise have been avoided. The water quality impacts associated with a reduction of the buffer or the authorization of additional buffer encroachments without the review and approval of a waiver or exception would be significant due to the absence of mitigation to offset these impacts.</li> </ul>		<p>– Water quality can enhance economic development.</p> <p><b>Decision Taken 12-14-10:</b></p> <p>Stakeholders expressed general support for allowing “buffer encroachments be authorized in the Route 28 Tax District and other designated areas targeted for economic development.”</p> <p>(16 in support out of 26 present).</p>
<b>P.</b>	<b>EROSION CONTROL ORDINANCE</b>			
<b>28.</b>	<p><b>Should the existing language in Chapter 1220, the Loudoun County Erosion Control Ordinance, allowing Agreements in Lieu of a Plan to be submitted for grading permit applications for single-family detached homes, rather than an erosion and sediment control plan be retained?</b></p> <p><b>Current Draft Ordinance:</b> The Agreement in Lieu of a Plan was removed due to the difficulty with</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Maintain the reference to Agreement in Lieu of a Plan in Chapter 1220.05 (a), 1222.05(x), and 1220.06(c) as suggested.</b></li> </ol> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The Agreement in Lieu of a Plan does not specify the specific location of the proposed improvements, the approved limits of disturbance, or the specific location of required erosion and sediment controls, which complicates implementation of the required measures</li> </ul>	<p>It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA.</p> <p>If RPA delineations are not to be required in conjunction with grading permits for single-family homes, Staff can support maintaining the Agreement in Lieu of a Plan.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>PEC contingent upon Issue #1.</p> <p>Stakeholders did not take action on this issue.</p>

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	enforcing the Agreements and the need to require a plan of development for all projects that disturb more than 2,500 square feet to facilitate the analysis of whether or not an RPA delineation would be required and to implement the buffer requirements.	<p>by the applicant and enforcement by the County.</p> <ul style="list-style-type: none"> <li>There would be no plan on which to depict the RPA delineation.</li> </ul>		
29.	<p><b>Should the E&amp;S exemption for “septic tanks lines and drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system” be retained to minimize costs for drainfield repair and replacement?</b></p> <p><b>Current Draft Ordinance:</b> The current ordinance removes the exemption consistent with the Bay Act regulations.</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft Ordinance.</b></li> <li><b>Maintain the referenced exemption.</b></li> </ol> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The cost of the grading permit may be a disincentive to repairing malfunctioning systems which are detrimental to water quality.</li> </ul>	Staff supports Option #2, pending additional discussion with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b></p> <p><a href="#">Option #2. Issue Resolved.</a></p>
<b>Q.</b>	<b>FACILITIES STANDARDS MANUAL (FSM)</b>			
30.	<p><b>Can a property owner or applicant submit an RPA delineation for approval separate of a plan of development?</b></p> <p><b>Current Draft FSM:</b> While the current draft FSM does not preclude the submission of an RPA delineation application independent of a plan of</p>	<ol style="list-style-type: none"> <li><b>Retain the current draft FSM.</b></li> <li><b>Clarify that RPA delineations can be submitted separate from a plan of development and draft standards for the submission and review of an RPA delineation application.</b></li> </ol>	<p>Staff supports Option #2, pending additional discussion with the stakeholders.</p> <p>It is noted that this issue is contingent on the option selected for Issue #1 regarding the mapping of the RPA.</p>	<p><b>11-16-10 Triage of Issues:</b></p> <p>LVE/PEC Contingent upon Issue #1.</p> <p><a href="#">Stakeholders did not take action on this issue.</a></p>

*Stakeholder Review of the Draft Chesapeake Bay Preservation Act Amendments*

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	development, it does not specify the accompanying application standards.			
<b>31.</b>	<p><b>Should the following Sections of the FSM be amended to not require the location of the Ordinary High Water Mark (OHWM) of perennial water bodies, connected wetlands, where applicable, and the Buffer Area to be shown on the development plan, but rather just the approved RPA line?:</b></p> <p>8.102.A.41 8.103.A.40 8.103.8.A.15 8.106.A.41 8.109.B.4 8.111.8</p> <p>The issue is whether or not details associated with an application for RPA approval need to also be shown on subsequent plan applications due to the fact that it is redundant, expensive, and unnecessary to show this data multiple times. Showing only the approve RPA line should be all that is necessary.</p>	<p><b>1. Retain the current draft FSM.</b></p> <p><b>2. Modify the requirements to depict only the RPA line on the plan of development in the referenced FSM sections.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The proposed amendment would result in the inability of Staff to verify that the “RPA line” is depicted correctly (e.g., 100-feet from the ordinary high water mark of the perennial stream and/or connected wetlands) on subsequent plans.</li> <li>These features are necessary to evaluate the conditions associated with exempt and permitted uses, the Water Quality Impact Assessment, mitigation options, and associated RPA exceptions.</li> <li>The proposed amendment would result in a lack of disclosure to property owners regarding the presence of these features on recorded lots, which could increase potential RPA violations.</li> </ul>	Staff seeks additional discussion and clarification with the stakeholders.	<p><b>11-16-10 Triage of Issues:</b> FSM detail associated with the submission of development plans.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification for staff.</p>
<b>R.</b>	<b>STAKEHOLDER ADDITIONS</b>			
<b>32.</b>	<p><b>Can accommodations be provided for dwellings in the RPA as of the date of adoption?</b></p> <p><b>Current Draft Ordinance:</b></p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><b>2. For dwellings located in the Landward 50-feet as of the date of adoption (approximately 1,092 addressed structures): Allow disturbances up to</b></p>	Staff requests additional discussion with the stakeholders.	<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p>Stakeholders did not take action on this issue.</p>

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	<p>Additions up to 2,500 square feet in the landward 50-feet of the RPA are processed as waivers. Additions greater than 2,500 square feet, additions that extend into the seaward 50-feet, and detached accessory structures are processed as RPA Exceptions, as outlined in Section 1222.20.</p>	<p><b>2,500 square feet in the Landward 50-feet for minor additions and accessory structures to be processed as Administrative Waivers as outlined in Option #2 under Issue #7.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• The Minor Water Quality Impact Assessment ensures that water quality impacts are minimized and mitigated.</li> <li>• The incentive to locate structures in the Landward 50-feet, as opposed to the Seaward 50-feet is maintained.</li> </ul> <p><b>3. For dwellings located in the Seaward 50-feet as of the date of adoption (approximately 173 addressed structures): Modify the requirements to allow disturbances up to 2,500 sf within the Seaward 50-feet for additions and structures accessory to a dwelling located within the Seaward 50-feet as of the date of adoption with the approval of an Administrative Waiver. Modify the requirement for a Major Water Quality Impact Assessment to require a Minor Water Quality Impact Assessment.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• The Minor Water Quality Impact Assessment does not require the assistance of a consultant or engineer.</li> <li>• The Administrative Waiver replaces the requirement for disturbances in the Seaward 50-feet to be processed as an RPA Exception reviewed and approved by the Chesapeake Bay Review Board.</li> </ul>		



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33.	<p><b>Is 100-foot buffer necessary in all circumstances? Should the buffer be reduced or increased based upon scientific data?</b></p> <p><b>Current Draft Ordinance:</b> A 100-foot buffer adjacent to and landward of the Ordinary High Water Mark of perennial streams and connected wetlands is required.</p>	<p><b>1. Retain the current draft Ordinance (100-foot buffer).</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The Chesapeake Bay Preservation Area Designation and Management Regulations requires a buffer area <b><u>not less than</u></b> 100 feet in width located adjacent to and landward of both sides of any water body with perennial flow and connected wetlands.</li> <li>The Chesapeake Bay Preservation Area Designation and Management Regulations state that “The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.”</li> <li>“The Chesapeake Bay Program recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.”</li> </ul> <p><b>2. Expand the 100-foot buffer.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>There would be additional sediment and nutrient removal benefits of an expanded buffer.</li> <li>There would be additional flood control and wildlife benefits of an expanded buffer.</li> <li>Wider buffers provide additional pollutant removal on sloping land.</li> <li>“The Chesapeake Bay Program</li> </ul>	<p>Staff requests additional discussion with the stakeholders.</p>	<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p><b>Decision taken 12-7-10:</b></p> <p>Require only a 35-foot buffer with limited exemptions. (17 out of 24 members in favor) <i>(Note that agreement on this issue divided in a fairly common manner within the group: broad support was given by the HOA representatives and others, but little or no support from environmental group representatives)</i></p> <p>Broad agreement that exemptions could include such items as:</p> <ul style="list-style-type: none"> <li>a. Agriculture and rural economy uses and no-till activities, conditioned on having a nutrient management plan approved by the SWCD and implementation of no-till practices.</li> <li>b. Farm Ponds.</li> <li>c. Residential accessory structures in the RPA up to a cumulative total of 150 square feet in the landward portion of the buffer.</li> <li>d. Existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.</li> <li>e. Private roads, wetland restoration areas, septic fields, storm drains.</li> <li>f. Wet ponds.</li> <li>g. No un-funded mandates within the buffer.</li> <li>h. Planned/approved trail crossings of streams.</li> <li>i. Existing development.</li> </ul>



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		<p>recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.”</p> <p><b>3. Reduce the 100-foot buffer.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• A reduced buffer would allow for more developable land without the need for approval of an Administrative Waiver or an RPA Exception.</li> <li>• There would be reduced sediment and nutrient removal benefits of a reduced buffer.</li> <li>• A reduced buffer would not support significant vegetation. The critical root zone of mature trees would frequently be impacted within a 50-foot buffer. Therefore, a 50-foot buffer may not be wide enough to maintain existing forest cover. Disturbances within the root zone would negatively affect mature trees. Trees provide organic matter necessary to sustain aquatic life. They also cool stream temperatures, which increases the level of dissolved oxygen in the stream.</li> <li>• A reduced buffer may not provide any flood control benefits.</li> <li>• Narrower buffers do not provide as much pollutant removal on sloping land.</li> <li>• “The Chesapeake Bay Program recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.”</li> </ul>		<p>j. A reasonable amount of certain disturbances [such as required infrastructure elements].</p> <p><b>Comments included:</b></p> <ul style="list-style-type: none"> <li>• What about water quality? If you add all these exemptions for only a 35-foot buffer, you end up with virtually no buffer at all and may not gain anything in regard to water quality.</li> <li>• Don’t base exemptions on situations that are the exception, as opposed to the rule, based upon the worst case scenario</li> <li>• State has never studied the Piedmont areas for what kind of buffer is effective, which could lead to potential litigation.</li> </ul>

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		<p><b>4. Allow the 100-foot buffer to be reduced to 50-feet in conjunction with a prescribed planting.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Same considerations as Option #3, plus the following:</li> <li>• The prescribed planting would ensure that the full width of the reduced buffer is reforested, which would improve the water quality benefits of the buffer in cases where the buffer is not already forested.</li> <li>• The reduced buffer would result in reduced water quality protection in cases where the 100-foot buffer is already forested and the reduction would result in removal of existing trees.</li> <li>• This type of reduction could be proposed as an RPA Exception, where appropriate, under the current draft Ordinance.</li> </ul>		
<b>34.</b>	<p><b>Can uses associated with HOA-owned property be exempted from RPA and RMA requirements?</b></p> <p><b>Current Draft Ordinance:</b> HOA projects that propose disturbances in the RPA that are not otherwise permitted or exempt (e.g., trails) would be processed as RPA Exceptions. A Water Quality Impact Assessment would be required in conjunction with the RPA Exception to minimize and</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• HOA projects typically require a Site Plan and may require a Special Exception approval by the Board of Supervisors similar to other development projects. A wetland delineation is currently required prior to the approval of a Site Plan. A Perennial Flow Determination and identification of the buffer line would also be required under the current draft Ordinance.</li> </ul>	Staff requests additional discussion with the stakeholders.	<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p><b>Decision taken 12-14-10:</b></p> <p>It was noted that this was also a legal issue and that it may not be possible to exempt properties or projects based solely upon ownership status..</p>

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	<p>mitigate water quality impacts.</p> <p>The only applicable RMA requirements are the septic pump-out and the 2,500 square foot grading permit threshold.</p>	<p><b>2. Exempt development projects within the RPA on HOA-owned land.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• The exemption would result in additional disturbances within the RPA.</li> <li>• A Water Quality Impact Assessment to minimize and mitigate water quality impacts is not required for Exempt Uses.</li> <li>• Should there be a square footage limit on the proposed exemption (e.g. 2,500 sf in the landward 50 feet)?</li> </ul> <p><b>3. Allow development projects within the RPA on HOA-owned land to be processed as Administrative Waivers similar to Accessory Structures, as outlined in Option #2 Under Issue #7.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Disturbance of the RPA would be limited to 2,500 sf in the landward 50 feet.</li> <li>• A Water Quality Impact Assessment would be required to minimize and mitigate water quality impacts.</li> </ul> <p><b>4. Maintain the existing grading permit thresholds for HOA projects (10,000 square feet similar to the provisions for agricultural structures outlined in Option #2 Under Issue #8.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>• Would reduce the cost to HOAs to submit grading permit applications for small projects (e.g., trails).</li> </ul>		

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		<ul style="list-style-type: none"> <li>Would result in a minimal reduction in the level of water quality protection compared to the current draft Ordinance due to the fact that E&amp;S controls would not be implemented in conjunction with land disturbances greater than 2,500 sf, up to 10,000 sf.</li> </ul>		
35.	<p><b>Should RPA Exceptions be submitted to the Planning Commission or the Facilities Standards Manual Public Review Committee for review and approval?</b></p> <p><b>Current Draft Ordinance:</b> RPA Exceptions are reviewed by the Chesapeake Bay Review Board (CBRB). The CBRB is composed of 9 members, with demonstrated knowledge of and interest in environmental issues appointed by the Board of Supervisors for a term of 4 years. The members represent diverse professions related to agriculture, land development, and the environment.</p>	<p><b>1. Retain the current draft Ordinance.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The CBRB includes members from diverse economic sectors that have demonstrated knowledge and interest in environmental issues.</li> </ul> <p><b>2. Specify that RPA Exceptions be submitted to the Planning Commission or the Facilities Standards Manual Public Review Committee for review and approval.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The membership of these groups is not subject to specific requirements related to economic sector representation and environmental knowledge and experience.</li> </ul>	Staff requests additional discussion with the stakeholders.	<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p>Stakeholders did not take action on this issue.</p>
36.	<p><b>Should the Grandfathering policy be amended to allow approved projects to proceed as is?</b></p> <p><b>Current Draft Grandfathering Policy:</b> Applicants are required to</p>	<p><b>1. Retain the current draft Grandfathering Policy.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>The current policy ensures that disturbances into the RPA are minimized</li> </ul>	Staff requests additional discussion with the stakeholders.	<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p><b>Decision Taken 12-9-10:</b></p> <p>Agreed to County Attorney's language to</p>

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	perform RPA delineations and to conform to the requirements to the “greatest extent possible.” Encroachments into the RPA are permitted without the approval of an RPA Exception where the requirements cannot be met. The current policy requires “Where possible, a vegetated area, planted in accordance with Chapter 7 of the FSM, equal to the area encroaching into the RPA buffer area, and subject to a recorded easement, shall be established elsewhere on the lot or parcel in such a way as to maximize water quality protection and mitigate the effects of the buffer encroachment.”	<p>to the greatest extent possible without requiring subsequent review and action by the Board of Supervisors or the Chesapeake Bay Review Board when encroachments into the RPA are necessary to accommodate the approved development. The current policy also requires mitigation in the form of planting an equivalent area elsewhere on the lot or possible, where possible, to offset the water quality impact of the encroachment.</p> <p><b>2. Amend the Grandfathering Policy so that it does not require conformance with the RPA requirements.</b></p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> <li>Potential adjustments to the development layout to minimize disturbances into the RPA would not be evaluated resulting in possible disturbances to the RPA, which would reduce water quality protection.</li> </ul>		<p>grandfather “accepted and approved plans” with the removal of the qualifying phrase “to the greatest extent possible” such that conformance to the new regulations would not be required. (14 out of 20 in favor)</p> <p><b>Comments included:</b></p> <ul style="list-style-type: none"> <li>- Timing is important</li> <li>- Whether an application must have been forwarded to the Board following a Planning Commission public hearing to be grandfathered is a big issue to the Chamber of Commerce.</li> </ul>
<b>S.</b>	<b>OTHER STAKEHOLDER COMMENTS/QUESTIONS</b>			
<b>37.</b>	<b>Need a fresh look at review processes, including agricultural structures, individual dwellings/accessory structures, and land development applications.</b>	Consider as each issue is being discussed and at the end of the stakeholder process.		<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p>Stakeholders did not provide any additional detailed recommendations regarding this issue.</p>
<b>38.</b>	<b>What are the staffing costs? Provide an analysis of different scenarios and how they impact the number of applications, staffing, and time delays.</b>	Consider as each issue is being discussed and at the end of the stakeholder process.		<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p>Stakeholders did not provide any additional detailed recommendations regarding this issue.</p>
<b>39.</b>	<b>Simplify the current draft Ordinance and related processes</b>			<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p>

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	to the extent possible.			<p>The discussion on 12-14-10 centered on the question of what does “simplify” mean?</p> <ul style="list-style-type: none"> <li>– Some areas need more clarity; define what steps are required and when they occur.</li> <li>– Doesn’t mean reducing water quality.</li> <li>– Processes should be structured based upon current capabilities (people, processes, and technology).</li> <li>– Remove “unnecessary and costly” steps</li> <li>– Provide certainty of process/timeline.</li> <li>– Remove inconsistencies and define “change in use.”</li> <li>– It was noted that the group was advisory and was not writing the ordinance</li> </ul> <p><b>Decision taken 12-14-10:</b></p> <p>Stakeholders agree to recommend that all processes in the ordinance should be re-reviewed with the goal to simplify all of them, for homeowners, developers, farmers and staff. (22 of 26 at the table in favor – no opposition recorded).</p>
40.	Expand on the list of permitted uses.			<p><b>This issue was raised during the 11-16-10 Stakeholder Meeting.</b></p> <p>Stakeholders did not provide any additional detailed recommendations regarding this issue.</p>

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<b>T.</b>	<b>BIN ISSUES FOR BOARD CONSIDERATION</b>			
<b>41.</b>	<b>Will water quality impacts of the draft ordinance be analyzed? What's working and what's not? What is the impact on the stream – is it measurable or not?</b>			
<b>42.</b>	<b>Will there be a cost/benefit analysis? What is clean water? What is the goal? Include public assistance programs (e.g., cost-share) in analysis. Analyze at the macro and micro level.</b>			

**5. Individual Written Comments from Members (each not exceeding 150 words).**

*Note that the Stakeholder representatives agreed to allow each member to submit a concluding individual statement about the process and/or substance of the proposed regulations, not to exceed 150 words each. All submissions received by the extended deadline of close of business December 30 are shown below, in the order they were received.*

*In addition, members were invited to comment on the draft summary report submitted by the facilitator, dated December 20. Editorial comments are shown following the substantive comments. Many of the editorial suggestions were included in this revised report.*

**150-word Comment Statements**

**Sent: Wednesday, December 22, 2010 12:41 PM**

Mark,

Great job on this from my view I am fine with this as written, though I would guess I am the exception on this. Thanks again and happy Holidays.

Will Stevens [Loudoun Valley Estates]

**Sent 12-26**

Jeff Mach - Goose Creek Community Association.

*25% of lots in our association are impacted by the RPA. In its current form, the CBPO affects the ability of landowners to improve and use their property without spending thousands on engineering studies.*

*We urge the board of supervisors to:*

- Incorporate suggestions from stakeholders, in particular reducing buffer width to 35 feet with exemptions, removing delineation requirements, and removing the screening tool*
- Simplify the waiver/exemption process*
- Ensure there is no financial burden to landowners: costs associated to current draft would reduce property value of impacted owners*

*Furthermore, we believe the county needs to provide the following before moving forward with the process:*

- Cost to the county: we heard current staff will handle additional work associated to the CBPO, yet we have seen no study that backs this claim*
- A clearly defined objective of water quality improvement to be achieved*
- A cost-benefit analysis, derived from the two previous points*



**Sent: Sunday, December 26, 2010 4:51 PM**

**Statement from the Stakeholder Brown's Farm HOA**

The following is our position concerning the CBPO and the Stakeholder meetings. The stakeholder meetings as held were not effective because they were conducted in a rushed manor during the end of year holidays. The meetings should have started at least six months earlier to insure that all stakeholder issues were fully discussed and voted on. HOA representatives did not have the time to present the issues to their HOA boards for advice and consent. In addition, one organization, the PEC was unfairly represented by two voting members.

We further believe that key issues such as the exemption of Loudoun's towns and the lack of coordination with the EPA's requirements to the states in the CB watershed from the proposed CBPO legislation will defeat the purpose of achieving the goal of insuring clean water in Loudoun's waterways.

Brown's Farm HOA  
Joseph LaFiandra, President

**Sent: Monday, December 27, 2010 11:56 AM**

**Subject: WMSSC Comment to add to CBPO Summary Report**

The Loudoun Watershed Management Stakeholder Steering Committee - with representatives from agriculture, building, business, conservation, government, and residents - appreciates the opportunity to participate as a CBPO Stakeholder. We endorsed the county's "Comprehensive Watershed Management Plan" calling for a stream buffer ordinance. The committee supports a 100-foot buffer with reasonable exemptions to provide relief for property owners and applicants. The committee also supports the boundary of the RPA as depicted on the draft map, with provision for property owners to correct mapping errors should they occur; a 5-year septic pump-out and required maintenance for alternative systems; exemptions up to 150 SF for residential accessory structures in the RPA; clear and measurable performance standards for projects that lie within the RPA; a simplified process that minimizes the cost to property owners and reduces the administrative burden on staff; and incentives and supplemental cost-share funding for agricultural BMPs, fencing, and stream-side buffers.

Thank you,

Bruce McGranahan, Director, Rust Nature Sanctuary Audubon Naturalist Society

**Sent: Tuesday, December 28, 2010 2:58 PM**

**From:** Roy Jacobsen

1. Stakeholders **voted** that a 2/3 majority of the Stakeholders present constituted a Consensus in meeting #1 and re-confirmed this vote at the 11-30 meeting. **The Stakeholders did not identify a “full/unanimous consensus among the participants” as a criterion for Consensus in either meeting.**
2. Only at the last meeting, when a member of the press was attending, did the Piedmont Environmental Council (PEC) object to the “fairness” of the Stakeholder Meetings. They also wished to go on the record as opposing all the Consensus votes (votes supported by the Agriculture, HOA, Chamber of Commerce, EDC, DAAR, NVBIA Stakeholders and many others).
3. PEC Stakeholder, Ed Gorski, admitted the reason he supported the 100’ buffer was to slow or stop development in the county. PEC employee, Gem Bingal, also stated her support for the 100’ buffer was for no-growth reasons. She said she mis-spoke at a later meeting.

**Sent: Tuesday, December 28, 2010 3:08 PM**

Statement from the Agriculture Summit Group.

Bill Baker, Ag Summit Group

AGRICULTURE SUMMIT GROUP STATEMENT  
FOR  
SUMMARY REPORT OF CBPA STAKEHOLDERS GROUP  
12/28/10

Following months of prior meetings and public hearings, the Agricultural Summit Group did not expect the BOS October 20, 2010 action summaries that restricted Stakeholder recommendations for policy changes to only those which fell within the CBPA. This coupled with a clear directive for the TLUC to “...explore potential incentives to achieve effective forested riparian buffers along Loudoun streams,” constitute BOS decisions.

If staff is correct, and there are 1,500 miles of streams; the impact of removing 70’ (35’ buffer each side) or 200’ (100’ buffer) from landowner use and mandating reforestation is untenable for the 155,000 acres we control.

The agricultural community sought opportunities to partner with groups to improve water quality by asking for specific goals and metrics. Agriculture in Loudoun DOES NOT contribute to 90% of the pollution in our streams. We urge the BOS to maintain the status quo until clear objectives can be provided or risk changing the very fabric of agriculture as it exists today.

**Sent: Tuesday, December 28, 2010 3:24 PM**

Beckwith Bolle, Carter Braxton, Leesburg  
Dulles Area Association of REALTORS® (DAAR)  
Chesapeake Bay Preservation Act Ordinance Stakeholders Group Comments

The Dulles Area Association of REALTORS® believes that the County should move forward with a full public information campaign explaining all aspects of the Chesapeake Bay Preservation Ordinance (CBPO) in an effort to help property owners understand the full impact of the regulations and how they may impact the future use of their property. DAAR supports regulatory certainty and simplicity with regards to the implementation of the CBPO.

DAAR encourages the County to simplify the implementation process to make compliance as easy as possible for property owners and create tax incentives, flexible zoning requirements, tax abatement, direct funding and BMP cost sharing programs to improve the effectiveness of water quality protection programs.

Finally, DAAR believes that designating as RMA all areas of the County that are not designated RPA would impose an additional regulatory burden on properties that have relatively little potential to cause significant water quality degradation.

Thank you for this opportunity to offer our comments.

**Sent: Tuesday, December 28, 2010 4:50 PM**

**From:** Gem Bingol, WRTAC Representative

As the WRTAC representative, it appears that the CBPO stakeholder group largely failed to address the Board's charge. We discussed theoretical problems, not specifics. Had we focused on specific issues and examples that HOAs, farmers or developers would realistically experience, we could have provided the Board with workable solutions that also achieve the goal of protecting water quality. In this way, many stakeholders who could not assess inaccurate or misleading statements within our timeframe could have spoken knowledgeably about their specific problems.

I reiterate the WRTAC recommendation and ask that the Board maintain the technical elements WRTAC endorsed: the 100 foot buffer width, 5-year septic pump-out, and 2,500 square foot erosion and sediment control threshold. Further, please devise a solution to protect connected wetlands, incentivize buffers and map the RPA without undue burden to homeowners, farmers and developers in order to achieve the ecological benefit of contiguous buffers.

**Date: December 28, 2010 11:53:10 PM EST**

**From:** Kevin J. Turner, Board of Directors, South Riding Proprietary

I was honored to be a stakeholder in the process representing South Riding Proprietary, one of the largest HOAs in Loudoun County. Our General Manager, Wendy Taylor, and I attended most of the scheduled meetings. While I thought the process was administered as well as one might expect given the compressed timeline and time of year, the process did not allow enough time to address critical issues such as the cost benefit analysis of the CBPA and the possible impact on tax payers from a business process standpoint for the County to implement the CBPA.

In addition, no "external experts" in water quality were involved as part of the process to better educate the group in layman's terms on possible impacts on water and soil quality or to challenge / support what was in the matrix. I believe that outside industry perspective along with lessons learned would have been helpful in guiding debate and discussion. I was disappointed that no real consensus was met on most issues discussed, except for the need to simplify and streamline the current Ordinance before the BOS moves forward.

In summary, given the clear dissent and divide between HOA vs. Environmental representatives on most issues, the consensus reached on CBPA process improvement and simplification, and the many unresolved matrix issues, I think it would be ill advised for the BOS to move forward with the CBPA at this time or in the near future until all unresolved issues are addressed and some common ground is achieved on how to move forward.

*Stakeholder Review of the Draft Chesapeake Bay Preservation Act Amendments*

December 29, 2010

Loudoun County Board of Supervisors,

I had the pleasure of representing NAIOP on the Chesapeake Bay Stakeholders group and thank you for the opportunity to participate in this forum. Due to the diversity of the group and the level of understanding of the issues and the Board's direction, we did not complete the issues matrix to provide you with a large host of recommendations. However, consensus was reached on how to map and administer the RPA which was a great accomplishment. NAIOP has always supported the intent of the proposed ordinance to sustain and improve the health of our streams but had issue with the mechanics for its implementation as related to a defined, predictable and equitable process. The Stakeholders did accomplish a portion of this mission and I ask that you give careful consideration to our recommendations as you move forward with the draft ordinance. In addition and prior to adoption, please refer the process details of the ordinance to the Facilities Standards Public Review Committee for further review and refinement.



Linda Erbs

**Date: December 30, 2010 10:57:47 AM EST**

From: Tony Howard, President, Loudoun County Chamber of Commerce

Mark: Very good work on the summary report of the CBPA Stakeholder's recommendations. I do have a few suggested changes:

-Issue #39 - pages 5 and 27: Since the group advocated strongly for a simplified ordinance and supporting procedures for the benefit of all *applicants* - and did not specify nor exclude any class of applicant - I feel strongly that the report should not list homeowners, farmers, developers, etc. and describe them all as applicants or some other inclusive term.

-Issue #27 - page 7: I believe that 16 out of 26 stakeholders voted to exempt designated important economic development zones from the entire CBPA ordinance, not just to allow buffer encroachments.

Also, it should be noted that of the 10 votes that did not support this exemption, at least three of those were abstentions. To group these three stakeholders, who abstained for reasons unrelated to the merits of the issue, with those opposed this item overstates the opposition and is an inaccurate account of what happened.

Page 8 - Process Concerns, bullet point #2: On the question of whether the Stakeholders kept to the letter and the spirit of the Supervisors direction, it should be made plain to the Supervisors that on at least two occasions, County Attorney Jack Roberts made it very clear the Stakeholders had complete discretion to suggest any alternatives or exemptions to the CBPA ordinance, since Loudoun is a non-mandatory CBPA jurisdiction and that the Board of Supervisors has the same discretion in their consideration of the ordinance. The sole caveat offered by the County Attorney is that the Stakeholders' suggestions must be based in some defensible logic.

So to state, as was done in several areas, that some stakeholders felt the group had "gone off track" without making plain that the legal advice the group was given allowed for maximum flexibility and discretion is to do a disservice to the entire stakeholder group.

Thank you

Tony Howard, President, Loudoun County Chamber of Commerce

**DATE: December 30, 2010**

**TO: Loudoun County Board of Supervisors and Staff**  
**FROM: Brambleton Community Association (BCA) Board of Directors**  
**and General Manager, Rick Stone**  
**SUBJECT: BCA Comments on the Proposed ChesBay Ordinance and**  
**Stakeholders Process (Key points due to the 150 word limit)**

Thank you for involving HOAs in the stakeholders process. BCA is hopeful the Board will consider involving HOAs at the beginning of the process when ordinances affecting HOAs are being considered. The Stakeholders timeline set by the BOS was unrealistic. The EPA and DEQ are considering major changes to ChesBay regulations. The County should suspend the adoption of this ordinance until the Feds and State have updated their regulations. The proposed ordinance places unnecessary burdens on HOAs and landowners. RPAs around stormwater management ponds should be removed from the ordinance. The proposed ordinance is complex and difficult to comprehend. Steps need to be taken to simplify the ordinance. BCA and other HOAs are voluntarily taking actions that are helpful to the ChesBay without an ordinance. Stream restoration projects and fertilizer regulations are more beneficial and less burdensome than the currently proposed ordinance. BCA will send additional correspondence to the BOS.

**DATE: December 30, 2010**

**TO: Loudoun County Board of Supervisors and Staff**

**Statement from Lowes Island Condominium Association (LICA) regarding the Chesapeake Bay Preservation Ordinance, by Board Secretary Cynthia Trautz**

First, we thank the Board for seeking the collective input of the HOA's of the county, and hope that future decisions will offer more and earlier input from affected stakeholders.

Although the LICA is impacted minimally in this issue of the CBPO, we encourage the Board to stop its march toward enacting this ordinance. Setting aside the complexity of the ordinance—which makes it virtually impossible for the average homeowner to comprehend, its downstream impact on property ownership and respect for the Constitution of VA and the U.S. is abhorrent. We appeal that the Board not enact ordinances that are tied to specious science, and which will not serve the overall objective—objectives to which we all agreed are important. There are better ways to address this issue without more onerous, costly and encroaching regulations.

**Sent: Thursday, December 30, 2010 1:31 PM**

**From:** Phil Keller, Delegate and Ed Burrell, Alternate - Leisure World of VA HOA

The Stakeholders process, while very intentioned and included, what seemed to be a clear objective, got off track with many unrelated issues and groups, who made it clear they wanted no ordinance. These diversions effected a “hijacking” by a few participants resulting in extreme reductions in the goal of improving water quality.

In the end the we believe the following points were clear about the proposed ordinance:

With inclusion of the exemptions and variance process, little or no infringement of property rights of HOA's or farmers would occur. (even with the 100 ft buffer) Evidence was very persuasive that the 35 ft buffer except in specific situations provides little or no positive effect on improving stream water quality.

The experiences in other jurisdictions made it clear that there was little or no negative economic impact documented or demonstrated resulting from an implementation of a water protection ordinance

We therefore recommend the Board of Supervisors take a positive stance on improving water quality and move the proposed ordinance forward with minimal change including maintaining the 100 ft buffer.

**Sent: Thursday, December 30, 2010 4:43 PM**

FROM: Joe Coleman, President, Loudoun Wildlife Conservancy

The Loudoun Wildlife Conservancy cannot support 35-foot riparian buffers because they will not achieve the benefits of a forested 100-foot buffer. As the following chart shows, narrower buffers are not effective. By protecting 100 feet next to streams and only allowing exceptions where appropriate, Loudoun County will reduce the nitrogen, phosphorus and sediment entering our waterways, improve aquatic life, create wildlife habitat, moderate water temperature, and provide flood control.

**The Effect of Different Size Buffer Zones on Potential Reductions of Sediments and Nutrients from Field Surface Runoff**  
(from Lowrance, R., et al, Water Quality Functions of Riparian Forest Buffer Systems in the Chesapeake Bay Watershed, 1995)

<b><i>Buffer Width Ft</i></b>	<b><i>Buffer Type</i></b>	<b><i>Sediment Reduction %</i></b>	<b><i>Nitrogen Reduction %</i></b>	<b><i>Phosphorus Reduction %</i></b>
15	Grass	61.0	4.0	28.5
30	Grass	74.6	22.7	24.2
62	Forest	89.8	74.3	70.0
75	Forest/Grass	96.0	75.3	78.5
95	Forest/Grass	97.4	80.1	77.2

<sup>1</sup>Percent reduction = 100 x (Input – Output)/Input



## **Editorial Comments on Draft Report**

**12-26**

Dear All ~

Well done to get such a good draft out in such a short time. Thank you.

Suggestions:

- It is too long. Shorten by separating ancillary materials into Annexes, including the compiled notes from each of the 7 meetings, and the Issues Matrix. Provide a brief executive summary.

- Section 1, 'Summary of Actions' mixes process description (up to pg 4) and actions (beginning on pg 5). The *Actions* section should begin with b. 'Resolved Issues', which are quite different from decisions on process.

- Unresolved issues (section c. pg 7) begins with clarification of issues not resolved, explaining that the kinds of features that would be exempt were identified, but the specificities were not agreed. Where issue #33 on buffers is discussed under 'agreed' actions, section c.1 also should be referenced to clarify that the agreement was limited to areas of exemption, not specificities.

- I do not think that point 2 on pg 8 is correct ("Fundamental Differences in Viewpoints") I did not hear any members say that 'economic burdens on landowners' should take a lower priority." I believe it would be more correct to say that 'Some members placed highest priority on protecting water quality, based on a belief that the scientific evidence for proposed restrictions is generally correct, with landowners taking responsibility for working within regulatory limits, and government being responsible for devising processes and funding to ensure equitable sharing of costs. Others felt that much less restrictive and/or voluntary measures should suffice, based on concerns that the scientific evidence for more restrictive measures is not compelling ."

All best,

Jane [Pratt]

**From: Ernest Mayer**

**Date: December 27, 2010 12:30:16 PM**

**Subject: Re: FW: Draft Summary Report of CBPA Stakeholders Group - REPLY**

Dear Mr Stultz and Mr. Herd:

Thank you both for your efforts in facilitating this monumental task. And thanks to the Loudoun County Board of Supervisors and their staff for initiating the Stakeholder meetings. The process has restored my faith in the representative government process in Loudoun County.

Although the group did not reach consensus on all the topics and time restraints prevented the group from discussing all of the topics, the process did provide an avenue for lively discussion of the Chesapeake Bay Preservation Act provisions and for constructive discussions of opposing points of view.

As for the Draft Summary Report, Wow! I'm impressed with the product and the unbiased presentation of the material. I do have a few recommendations for the layout. I am a firm believer in putting the most important facts before the "consumer" as quickly and concisely as possible. To that end I suggest a bit of reordering of the materials as follows:

Section 1. Summary of Actions...

- a. remove General Description of the Process and re-title it as Assignment and then include only the first three paragraphs from page 3 (moving the Stakeholder text to later in the document.)
- b. Resolved Issues (from the Issues Matrix) except I would suggest listing them in the same numerical order as they appear in the Matrix (less confusion than listing them by level of agreement.)
- c. retain the Fundamental Differences in Viewpoint discussion but list it as sub-section c.
- d. now insert the section on General Description of the Process and insert the Stakeholder List text after the six bulleted "facilitator" discussions.

Section 2. Move the Completed, Updated Issue Matrix forward.

Section 3. Move the Compiled Notes from Each of the Seven Meetings back to this section.

The rest of the document looks fine

I believe this simple shuffling of the text will present the pertinent results "up front" where they will more likely be viewed by the BOS and staff and in a more concise and easier to find fashion.

One last suggestion. I have read some of the suggested text additions offered by other Stakeholders and (with the few exceptions of correcting inaccurate wording) these suggestions appear to be self-serving efforts by individual stakeholders to have their personal

or organizational opinions appear in the document "after the fact" and in some instances at the expense of accurate reporting of the official meeting actions.

Thank you for allowing me to participate in this important activity, to represent the residents of the Potomac Green Community Association and to offer suggestions relative to the document to be presented to the County Board of Supervisors.

Wishing you all a prosperous and peaceful New Year.

E. H. Mayer

**From: Gem Bingol**

**Sent: Tuesday, December 28, 2010 4:50 PM**

**Subject: feedback on document**

Dear Mark,

Please share my thanks to Milt for compiling this extensive record. I offer the following suggestions/corrections.

**Page 4**

I would put all of the unopposed decisions made during the second stakeholder meeting--numbers 4, 19, 24 and 29 ahead of #39 since they were resolved first and with full consensus as originally decided. #39 was arrived at under the modified description of consensus.

**Page 6 & Page 7**

Discussion of item #33 under both Resolved and Unresolved Issues is confusing and needs further clarity. On page 6, the statement, "Broad agreement that exemptions could include such items as:" should note that only the first of the items was actually discussed and voted on. Otherwise, the list consists of points made by the stakeholders without further discussion which is noted on page 7. Perhaps some reference to the unresolved issues section on page 7 could be made on page 6, or there may be another way of making this clearer, but it needs some help.

**Page 8**

**Fundamental Differences in Viewpoint**

I agree with Jane Pratt's assessment of #2, but would go further though, and suggest that the first sentence is not accurate since it is overly broad. I offer the following suggestion as another way to describe the fundamental differences in viewpoint correctly:

**#2: Existing**

There appeared to be some fundamental disagreement about who is responsible for protecting water quality in the County, and who should bear the burden of doing it. Some members placed the highest priority on protecting water quality with economic and regulatory burdens on landowners taking a lower priority, while others had the opposite priority.

**#2 Proposed**

There appeared to be some fundamental disagreement about how to manage the burdens induced by the proposed regulation. Some members prioritized protecting water quality while utilizing equitable regulatory processes to minimize landowner burdens and costs. Other members prioritized the elimination of burden with water quality benefits of the ordinance as a secondary consideration.

Anything else that can be done to help the reader who did not attend the meetings in terms of organization of the document would be helpful.

My thanks to you and the rest of the staff also for your time and effort on this process.

**From: kevin.turner@us.ibm.com**

**Subject: Fw: Draft Summary Report of CBPA Stakeholders Group**

**Date: December 28, 2010 11:53:10 PM EST**

Milton,

First, thanks for all your hard work in leading us our CBPA Stakeholder Process. Overall, I think the content is good. There is a lot of information but all of it seems to be accurate as to the tone and theme of our meetings. I have listed a few possible suggestions below:

1. I think there should be a cover letter from the group thanking the board for the opportunity and perhaps pull out some of the themes/thoughts from our 150 word statements
2. I think we should call the Summary of Actions section as an Executive Summary.
3. I thought the Matrix was going to have staff recommendations column or will we have an opportunity to look at that later in the process?

Again, thanks for all your hard work and let me know if you have questions, comments or concerns. I have also attached my individual stakeholder comments.

Regards,

Kevin

**Sent: Thursday, December 30, 2010 1:31 PM**  
**Phil Keller, Delegate and Ed Burrell, Alternate**

Thank you for affording the Leisure World HOA the opportunity to participate in the CBPA stakeholder meetings. Ed Burrell and I have prepared the attached statement which is representative of our HOA community on this Loudoun County effort.

Additionally, we are providing the following comments and/or recommendations on the overall process.

- Stakeholders should have been members of the community they represented

- Stakeholders should have represented only the voice of their specific community

- Stakeholders should have limited their communications to other stakeholders to only that conducted at the meetings.

- More emphasis on ensuring that every stakeholder or pre-designated representative attend every meeting.

## **APPENDIX A.**

### **Ground Rules as Affirmed by the Stakeholder Representatives Group**

#### **Ground Rules For The Stakeholder Process**

*Revised and Affirmed by the Stakeholders 11-9-10; revised 11-30-10*

(New or amended language shown in underlines or ~~strikethroughs~~ and double underlines)

***Purpose of the rules:*** To ensure that each participant has a full and fair opportunity to participate, and to achieve the most effective and productive use of everyone's time and energy.

#### ***Participation:***

1. *Keep comments brief*, courteous, constructive, and respectful, and direct them to the facilitator.
2. *Refrain from side conversations* when another person is speaking.
3. *Listen closely and openly*: learn from the viewpoints and knowledge of others; recognize the value of each member's experience; be open to new information.
4. *State your name before you speak*, for the benefit of members (*initial rule*)
5. *The Stakeholder Representatives will enforce their affirmed ground rules* through the facilitator.
6. Role of Alternates - Stakeholder Representatives may assign an alternate to serve in their place at any given meeting. When alternates attend, they have full representation, but the representative must inform project staff in advance that the alternate will be attending and is approved by the primary representative. Stakeholders who assign an alternate commit to keeping the alternate informed of the content and substance of the process so the alternates are prepared to serve. Topics will not be revisited to satisfy the needs of alternates.

***[Facilitator's Note: The provision for an alternate is interpreted as allowing for one alternate from each group, rather than multiple alternates, and never more than one representative from any group participating in any particular meeting.***

#### ***Procedures:***

7. *Review meeting materials* and complete any assignments in a timely manner.

8. *Attend meetings and be on time.* Meetings will begin and end promptly on schedule. Members will notify the County staff project manager in advance if unable to attend a meeting, and whether an alternate will attend instead.
9. *Members will submit information they wish to share with fellow members,* to the County staff project manager in advance (giving as much time to staff as possible, but no later than close of business two days before the meeting – a 48 hour lead time), to allow for full and timely dissemination. Should a member wish to present information or a proposal for the representatives to consider which has not been provided to the County staff manager, 50 copies will be needed. Members recognize that any late information may or may not be considered at the meeting, depending on the will of the representatives.
10. *In any public communications on Representative's matters,* members will use the same tone of courtesy, respect, and constructive engagement as in Representatives meetings, and will make it clear that they speak only for themselves and not the Representatives as a whole. Members will not use the news media to lobby for their own viewpoints.

*[Facilitator's Note: the Stakeholders discussed this issue at some length, and acknowledged the difficulty and complexity of enforcement, and that essentially, members are on the "honor system" to simply show the same respect for fellow members in public statements between meetings as they do during the meetings.]*

11. *Keep all cell phones on a silent setting* during the meetings; if it is necessary to make or take a cell phone call, please leave the room.
12. *A summary of each meeting will be provided* prior to subsequent meetings, and the County staff project manager will post relevant materials on the County's website. *All meeting announcements will be posted* on the County's website and will be open to the public and the press.

***Decisions:***

12. *The Representatives' Decisions on substance and procedures will reflect the broad consensus* of the representatives, not necessarily unanimous agreement. The test for each member's decision is not "do I love it?" but rather "can I live with it?" Members who did not participate in a particular discussion need not be part of the consent agreement on that particular issue.
13. *The Goal is Always Consensus.* However, Stakeholders may "agree to disagree" on any given issue and measure of the level of consent by counting the number of members who support or oppose a particular proposition. Further, multiple viewpoints may be put forth as viable alternatives if a clear consensus on a particular issue is impossible to reach. Two-thirds support of stakeholders present constitutes a formal consensus of the group on any given issue. All input from representatives will be recorded and forwarded to the Board of Supervisors for the record.
14. *The Representatives can amend the Ground Rules by consensus agreement.*

## **APPENDIX B.**

### **List of Stakeholder Groups and Individual Representatives (and Designated Alternates) (Revised/Updated 12-6-10)**

Agricultural District Advisory Committee (ADAC)

Al Van Huyck

Agricultural Summit Group

Bill Baker

Dulles Area Association of REALTORS®

Beckwith Bolle

Economic Development Commission (EDC)

Joe Paciulli

Facilities Standards Manual Public Review Committee (PRC)

Bill Fissel

Loudoun County Chamber of Commerce (LCCC)

Colleen Gillis Snow

Tony Howard (Alternate)

Loudoun Soil and Water Conservation District (SWCD)

Jim Christian

Pete Holden (Alternate)

Loudoun Watershed Management Stakeholder Steering Committee (WMSSC)

Bruce McGranahan

Loudoun Wildlife Conservancy (LWC)

Joe Coleman

Nicole Hamilton (Alternate)

National Association of Industrial and Office Properties (NAIOP)

Linda Erbs

Lou Canonico (Alternate)

Northern Virginia Building Industry Association (NVBIA)

Sally Hankins

Michael Capretti (Alternate)

Piedmont Environmental Council (PEC)

Ed Gorski

Rural Economic Development Council (REDC)

Jane Pratt

Stephen Mackey (Alternate)

Water Resources Technical Advisory Committee (WRTAC)

Gem Bingol

Wetland Workgroup

Michael Rolband

Dan Lucey (Alternate)

Brambleton Community Association

Rick Stone

Broadlands Homeowners Association

Maureen Burns

Broad Run Farms Civic Association

Roy Jacobsen

Eric DeJonghe (Alternate)



*Stakeholder Review of the Draft Chesapeake Bay Preservation Act Amendments*

Brown's Farm Homeowners Association

Joe Lafiandra

Cascades Community Association

Steve Olekszyk

Goose Creek Community Association

Jeff Mach

Goose Creek Village Homeowners Association

Stephen Collins

Great Falls Chase

Steven M. Edwards

Lees Crossing Homeowners Association

Jack H. Merritt, Jr.

Dan O'Shea (Alternate)

Leisure World of Virginia (Includes the following condominium associations: Riverbend; Blue Ridge; Potomac Ridge; Magnolias and Riverview)

Phil Keller

Ed Burrell (Alternate)

Loudoun Valley Estates

Will Stevens

Lowes Island Condominium Association

Cindy Trautz

Sally Mann (Alternate)

Mirror Ridge Homeowners Association

Teresa Whitmore

Potomac Green Community Association

Ernest Mayer

Raspberry Falls Homeowners Association (aka The Moorlands)

Greg Branic

Ted Maschler (Alternate)

South Riding Proprietary Homeowners Association

Kevin Turner

Wendy Taylor (Alternate)

Spring Lakes Homeowners Association

Eric Egger

Stone Ridge Association, Inc.

Carol Teigen

Sugarland Run Townhouse Owners Association

Robert E. Simanski

Sycamorehill Homeowners Association

Kimberly Spiegel

The Village of Waxpool Homeowners Association

Greg Jones

Wolfgang Gruen (Alternate)

Waterfield Commons Association

Jeff Long

## **APPENDIX C.**

### **Compiled Notes from Each of the Seven Meetings.**

#### **Summary Notes from First Stakeholders Meeting 11-9-10**

Tuesday, November 9, 2010, 7:00 p.m. – 9:00 p.m., Ida Lee Park, Leesburg

- 1. Welcome/Introduction of Participants and County Staff** - Dan Schardein opened the meeting.
- 2. Agenda Overview and Board Direction** - Presented by the Facilitator, Milton Herd.
- 3. Background/Overview of CBPA Amendments** - Presented by Laura Edmonds
- 4. Establish and Affirm Ground Rules**
  - a. Operational Ground Rules for Meetings** – The stakeholders revised and affirmed these as shown in separate document on Ground Rules.
  - b. The role of the alternate stakeholder participants** - The stakeholders revised and affirmed these as shown in separate document and added to Ground Rules.
  - c. FOIA applicability and requirements** - Presented by the County Attorney. His two key points were: a) Copy staff (Mark Stultz at mark.stultz@loudoun.gov) on any correspondence with other stakeholders; and b) Don't put anything in writing that you don't want the public to see.
  - d. Other** (none)
- 5. Determine and Affirm Schedule of Future Meetings**

Stakeholders affirmed the following upcoming schedule of meetings:

Tuesday, November 16 - 6:30 p.m. to 9:30 p.m. - Location TBD. *[now the BOS mtg room]*

Tuesday, November 30 - 6:30 p.m. to 9:30 p.m. - Location TBD. *[now the BOS mtg room]*

Thursday, December 2 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 7 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - Location TBD.

**Note** The Stakeholders discussed whether to ask the Board of Supervisors for more time, but decided against doing so at this time, and instead to evaluate progress as work continues within the current schedule, reserving the option of requesting more time at a later date.

**6. Staff Overview of Issues Matrix**

Stakeholders identified several additional issues for the matrix. (Included in separate document).

**7. Review Results of the Meeting**

Recapped and revised the amended meeting schedule, as shown in #5. above.

**8. Adjourn** (adjourned at 9:15 pm)

**Summary Notes from Second Stakeholders Meeting 11-16-10**

Tuesday, November 16, 2010, 6:30 p.m. – 9:30 p.m., Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** - Dan Schardein opened the meeting precisely at 6:30 p.m.
- 2. Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the upcoming schedule of meetings. One representative objected to the compressed meeting schedule and asked the group to revisit the notion of asking the BOS for an extended time period. This idea was discussed but did not receive enough support from representatives to pursue it.
- 3. Review Results of First Meeting** – Facilitator reviewed the highlights of first meeting. No changes or clarifications were needed.
- 4 & 5. Review Issues Matrix** – Representatives began reviewing the Issues Matrix prepared by staff based on input to date, including new issues added by the representatives at the first meeting. Objectives of this initial review were to:
  - Identify any additional options for each issue
  - Identify which, if any, options might be generally acceptable, right off the mark.
  - Identify which issues are primary or fundamental, and which are secondary or dependent on the resolution of the primary issues.
  - Identify which issues are beyond the scope of our work in this process.

Specific results of Issues Review are shown on the following pages.

## **6. Review Results of Meeting and Schedule of Future Meetings**

Stakeholders discussed a change in meeting dates in order to be able to use the Board of Supervisors meeting room. However, the consensus was to keep the dates as now scheduled, and look for a suitable room for the December meetings. Thus, schedule of meetings was re-affirmed:

Tuesday, November 30 - 6:30 p.m. to 9:30 p.m. - Location - BOS meeting room

Thursday, December 2 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 7 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Representatives also discussed alternative meeting formats – plenary discussions vs. breakout groups, and decided for the time being to keep working as a plenary group, but keep the option of breakout groups available if needed.

## **7. Adjourn** – Facilitator adjourned the meeting precisely at 9:30 pm.

### **Summary of Review of Issues Matrix (11-16-10)**

(Note: Issues deemed to be “major issues” are shown in **bold font**; *Resolved Issues in Italics.*)

#### **Issue #1 – RPA Mapping**

There was broad support for Options 5 and/or 6. Affirmed as a major issue.

#### **Issue #2 –Remove RPA Adjacent to Wet Ponds**

There was some support for Option 3 with modifications, and for Option 2. Concern was cited regarding conflicts with approved proffers requiring buffers in some communities. Affirmed as a major issue due to the fact that most of the RPA lies adjacent to ponds in many communities.

#### **Issue #3 –Eliminate RMA**

There was some support for Option 3 and for Option 1. Likely a major issue.

#### **Issue #4 – Eliminate RPA Screening Tool**

*There was broad support for Option 2. This issue is resolved.*

**Issue #5 – Accessory Residential Structures Exempt from CBPO**

This is a major issue in that *its resolution is tied to other issues*. [Thus, it's actually a dependent issue]. Suggestion to use Fairfax County's language to address this. Similar to issue #2. Fairfax County's policy is to only exempt sheds less than 150 sf over areas of existing lawn in the RPA. Options #2 & #3 allow sheds to be constructed anywhere in the RPA. Option #3 allows a cumulative total of 150 sf of disturbance anywhere in the RPA to accommodate multiple structures (e.g., a shed and a playset).

**Issue #6 – Accessory Structures and Uses Approved by Admin Waiver**

Affirmed as a major issue. What is the process? Needs work on the administrative waiver process to clarify.

**Issue #7 – Multiple Accessory Structures up to 2,500 s.f. approved by Admin Waiver**

What is the connection to the RPA on the parcel?

New option suggested: Use the *percentage* of impervious area on site in RPA.

RPA percentages for 8,515 parcels containing RPA are as follows:

<25% RPA – 5,271 (62%)

25-50% RPA – 2,074 (24%)

50-75% RPA – 809 (10%)

>75% RPA – 361 (4%)

**Issue #8 – Increase Land Disturbance Threshold above 2,500 s.f.**

Some support for Option 2, and for Option 3. Suggestion to use 10,000 sf for everything. Suggestion to use 10,000 sf for Ag, and 5,000 sf for commercial as currently defined. Affirmed as a major issue.

**Issue #9 – Previously Approved Projects to meet CBA standards**

What is the difference between “practical” and “possible”? While “possible” includes a discussion related to costs/viability of various options. Compliance with “practical” is based principally upon cost considerations. State Code Section 15.2-2261 refers to “greatest extent possible” and does not include the term “practicable.” Potential conflict with approved proffers. Proffer would be a de facto “grandfather”. Would be judged by conformance with the approved concept plan. New Option: “Grandfather all previously approve projects” is already included as Item #36. (would need to define this phrase). Affirmed as a major issue.

**Issue #10 – Exemptions to Grandfathering Policy**

Similar to Issue #9. Affirmed as a major issue. Also need to address pending plans that are in the review process. Pending plans include plans submitted pursuant to previously approved plans (e.g., construction plans submitted pursuant to an approved preliminary plat).

Issue #11 – Definition of Best Management Practices

Some representatives indicated that Option 2 is okay. Need better definition of the term “most.” What are the water quality goals? (They are cited in the State regulations.) The water quality goal is to reduce nonpoint source pollution (e.g., sediment and nutrients).

The Chesapeake Bay Preservation Area Designation and Management Regulations state: “The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.”

How is the effect quantified? (SWCD will make the call). This was flagged as “We hope this is not a major issue.”

Issue #12 – Definition of “Plan of Development”

Option 1 had some support; representatives acknowledged that this issue is contingent upon Issue #1. Need more definitive delineation up front.

Issue #13 - Definition of “Redevelopment”

“IDA” (Intensely Developed Area) is a new term. New definition of “redevelopment” affects the whole zoning ordinance. (Staff noted that certain definitions are limited to the Chesapeake Bay provisions and would not conflict with other parts of the ordinance). May not be an issue if other permissible encroachments are permitted within the RPA.

Issue #14 – Private Roads and Driveways

There was some support for Option 1. This is a potential major issue. “Public vs. private” is an ownership issue, not a functional issue. There are different design specifications for Public vs. Private roads in the Facilities Standards Manual. Would this apply to existing roads? (Applies only to new construction, not maintenance).

Issue #15 – Wetland Restoration

Is there a potential conflict with federal law? (in 84 jurisdictions who use similar provisions, no such conflict has been identified). Need to make this ordinance simpler. Substantial support for Option 2. Some support for Option 1.

Issue #16 –Septic fields/connections and storm drains in RPA

Storm sewers *have* to be in RPA. Some support for Option 2. This was affirmed as an issue of clarification.

**Issue #17 – Planting of Buffer Area**

Affirmed as a major issue due to cost considerations. Some support for Option 2. Cost is a concern, as is “change in use.” There may be other options as well.

**Issue #18 – Minimum Distance between RPA and Principal Structure**

Some support for Option 2. New Option 3: Specify percentage of yard required to be located outside the RPA (lower percentage on larger lots). There was strong sentiment for using a definitive number for setbacks – the issue is thus: what is the most appropriate number?

**Issue #19 – Optional Provision for Plastic Filters**

*Broad support for Option 1 - This issue is resolved.*

**Issue #20 – Mandatory Septic Pump-Out**

New Option: Tie pump out timing to the # of occupants vs. size of the house, etc.

New Option: Eliminate such requirement.

New Option: Notify people when they need to pump.

Discussion points: What is the cost of the pump out? How to stop leaching from septic tanks? How many failures are there now? Leaching can occur before failure, so failure isn’t a reliable measure of the problem. A 5-year pump-out regime would yield a 1,300 pound nitrogen reduction per year. Need to define the problem more precisely. What about the cost and effectiveness of enforcement? The average cost of the pump-out is \$218 (\$44 per year).

Section 1222.17(a).iv. requires licensed septic tank cleaners to report all pump-outs in a manner acceptable to the Loudoun County Health Department. These individuals currently provide the information via an online database. County staff would divide the County into five sectors and mail a notification to one sector per year such that all sectors are notified at the end of five years to manage the workload.

**Issue #21 – WQIA requirement for smaller structures in seaward 50-feet**

Affirmed as major issue, but also dependent on Issues #5 and #33. New Option 3 – remove WQIA requirement and use performance standards. (Noted that performance standards are contained within the WQIA). Shouldn’t require this analysis to approve encroachments into the buffer. This would be a de facto exemption.

**Issue #22 – Buffer Area vs. RPA**

Does buffer = RPA?

Lots of support for Option 1 – clarify that only the RPA Buffer can be impacted with approval of the waiver; wetland impacts require approval of an RPA Exception.

**Issue #23 – Elimination of WOIA requirement for “Administrative Waivers for Loss of a Buildable Area (Section 1222.19)”**

Affirmed as major issue.

Issue #24 – Administrative Waiver of Performance Criteria

*Broad support for Option 2. This issue is resolved.*

Issue #25 – County Funding to protect streams in Ag Areas

What is the fiscal impact? (not significant in relation to entire County budget).

No provision for maintenance or replacement of fencing. Wait for BOS committee action. BOS may want to know what stakeholders think.

What’s the impact of regulatory implementation? (Participation in ag cost-share program is currently voluntary).

Representatives were leaning toward Option 2.

Issue #26 – Appeals of Administrative Decisions

This is a secondary or dependent issue. Some support for Option 1 and also for Option 2. Why do we have a Review Board? Why not just an administrative process? (the Board reviews RPA encroachments processed as RPA Exceptions and appeals to administrative approvals).

**Issue #27 – Buffer Encroachments in Route 28 Tax District**

Affirmed as a major issue. Grandfathering, vesting concerns.

Issue #28 – Agreements in Lieu of Plan for Grading Permits

Representatives agreed that this issue is contingent on Issue #1.

Issue #29 – E&S Exemption for Septic Tanks

*Option #2 was preferred. This issue is resolved.*

Issue #30 – RPA Delineation Application Separate from a Plan of Development

Representatives agreed that this issue is contingent on Issue #1.

Issue #31 – Depicting the RPA on Development Plans

Representatives agreed that this issue is not major and that language can be worked out through a focused discussion with County



staff.

Issues #32 - 42

These issues were remaining when adjournment time came, so representatives agreed to take these up as a first order of business on November 30, and to move on to a closer examination of the major issues as soon as possible after reviewing these remaining issues.

**Summary Notes from Third Stakeholders Meeting 11-30-10**

Tuesday, November 30, 2010, 6:30 p.m. – 9:30 p.m., Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:30 p.m.
- 2. Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the upcoming schedule of meetings.
- 3. Review Results of First Two Meetings** – Facilitator reviewed the highlights of first two meetings. Stakeholders clarified the ground rules for decision making and affirmed that two-thirds support of stakeholders present would constitute consensus of the group on any given issue.
- 4 & 5. Review Issues Matrix** – Representatives continued reviewing the Issues Matrix prepared by staff based on input to date.

The Stakeholders began reviewing the re-ordered list of issues, each of which had a proposed resolution, aimed at finding broad support, based upon the previous discussions of the group. The discussion began with Issue #1 and did not move beyond that to the other issues.

**Issue #1 – RPA Mapping**

At the previous meeting, there was broad support for Options 5 and/or 6. Staff offered a new Option 7.

*Discussion:*

RPA is defined in the regulatory framework from the State; it is worthwhile to stay within settled framework. County Attorney noted that the County has some latitude in customizing the definition.

Participants affirmed the components of the RPA, in terms of what needs to be addressed to solve the mapping issue:

- Streams
- Wetlands
- Buffer width

### Streams

Participants identified three basic mapping alternatives. There was broad support for either option 2 or 3:

- 1 intermittent streams, or
- 2 perennial streams as mapped in draft amendments, or
- 3 perennial streams as mapped based on the size of drainage area, say 35 or 50 acres.

Key sub-issues:

- Balancing the desire to include all perennial streams, with the difficulty and cost of obtaining reliable data to identify such streams (staff estimates that about 2/3 of all perennial streams are shown on the current map base).
- Cost of delineation to the county; cost of delineation to the landowner.
- Balancing cost impacts on different types of landowners – homeowners, farmers, developers.
- Level of accuracy/amount of built-in error in defining perennial streams.
- Process, cost, and timing of delineations and of exemptions/waivers.
- Area of land disturbance allowed before site delineation is required.

### Wetlands

Key sub-issue: Whether to include connected wetlands, or just “the green line.” How much local regulatory control is needed vis-à-vis federal and state regulatory control.

### Buffer width

Participants did not reach this issue in their discussion.

### **Other Matters**

- Participants asked staff to bring maps showing the RPA based upon the drainage area approach.
- Participant asked to address various related issues raised by the recent release of Virginia’s Chesapeake Bay TMDL Phase I Watershed Implementation Plan.

- Participants asked for communication on the activities of the BOS Land Use and Transportation Committee regarding buffer incentives.

**6. Review Results of Meeting** - A brief recap was discussed and reminder of continuation of the meeting to December 2.

**7. Adjourn** – Facilitator adjourned the meeting at 9:30 pm.

***Note Schedule of remaining meetings:***

Thursday, December 2 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Tuesday, December 7 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

**Summary Notes from Fourth Stakeholders Meeting 12-2-10**

Thursday, December 2, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:35 p.m.
- 2. Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the ground rules that were affirmed by the Stakeholder Representatives. Some discussion was had about attendance and schedule.
- 3. Review Results of First Three Meetings** – Facilitator reviewed highlights of first three meetings.
- 4. Review Issues Matrix** – Stakeholders continued reviewing the Issues identified earlier.

The Facilitator presented a proposed package of solutions to the stakeholders to consider regarding two major issues and their related sub-issues, based on the discussion from the previous meeting. The two major issues were RPA Mapping and Buffer Width.

**RPA Map**

**General Questions/Comments:**

- Why not just use the USGS map (“blue-line map”)?
- TMDL report (WIP) from the state just came out this week – why not wait?
- State will only pay for 35-foot buffers associated with perennial streams on the USGS blue-line map.

**Specific Questions about the Proposed Solutions** *[staff responses in italics]:*

Item 1.e: Retain existing RPA – What does this mean? *[The map with updates presented to the Board of Supervisors on 9/21/10.]*

Item 1.b: Delineations are required at a specified threshold of significant land disturbance –

- Do we assume anywhere in the county? *[Yes.]*
- Does it depend on when it’s done (time of year)? What recourse if one disagrees with the finding? Appeal? *[Section 1222.29 provides that landowners can approach the County with a potential error to get it corrected. No fee established for this service; maybe never a fee. Ultimate appeal would be to the Chesapeake Review Board – within 30 days.]* Stakeholders responded that there was a perennial stream protocol and that the presence of flow was only one of multiple criteria for the designation of a perennial stream.

Items 1.b and 1.d: Could these be the same, de facto? *[Yes.]*

**Stakeholders then discussed the proposed solutions and identified three basic options for using the RPA Map, and measured the level of support among those present for each option** (22 stakeholders were at the table):

1. Use existing RPA map of perennial streams with no additional delineations (Option #5). (14 in favor)
2. Use existing RPA map of perennial streams with delineations to expand or contract it. (5 in favor)
3. Drainage area based map – “over-mapping” with delineations to reduce the area. (1 in favor)

Having found the most favor with the use of the existing RPA map with no additional delineations, the stakeholders then identified two basic map options, and discussed them.

1. Draft RPA Map (the “green line”) – includes approximately 1,000 miles or 2/3 of perennial streams in the County.
2. USGS Map (“blue line” map) – includes approximately 500 miles or 1/3 of perennial streams in the County.

**Comments and questions about map options included:**

- Could there be an “optional” delineation to correct errors? *[Yes.]*
- We need to use the best science available.
- Is the County RPA map more accurate than the USGS map? *[Yes.]*

**Stakeholders then measured the level of support for each of the two map options:**

1. Draft RPA Map (the “green line”) (15 in favor)
2. USGS Map (“blue line” map) (4 in favor)

### **Buffer Width/Exemptions/Waivers**

#### **Questions/Comments:**

3.g. - Exempt Approved Drainfields –

“Approved” drainfields means “permitted” but not built? *[Yes, inclusive of existing ones.]*

3.h – Require Minor WQIA rather than major –

What’s the difference between “major” and “minor”? *[Mainly complexity and therefore cost to the applicant. Major assessments require an engineered plan and tree cover inventory.]*

3.e. - Exempt private roads and driveways in the RPA –

What does this mean? *[Private roads and drives would be exempt according to the same criteria as public roads.]*

3.b. and c. - Allow disturbances up to 2,500 sf /5,000 sf in the Landward 50-feet by *Administrative Waiver* on lots that contain 50% or less RPA –

Potential conflict/confusion with these percentages. What size lots do these pertain to?

- Why not a 35-foot buffer, because sometimes they work better, and State and Feds only look at 35-foot buffers for credit under the TMDL?
- Minimum 100-foot buffer is outlined in the Chesapeake Bay Preservation Act.
- 100-foot buffer is a huge issue for the agricultural people - where are the exemptions for agriculture? *[They are included – allow reductions to 25 feet with the implementation of agricultural Best Management Practices.]*
- Are there exemptions for stormwater outfalls? *[Yes, permitted with a Water Quality Impact Assessment to assess water quality impacts and provide mitigation.]*

- You can exempt urban areas, agriculture, etc., under the Bay Act.
- The list of exemptions needs to be clarified – list all the details of current and proposed exemptions – ag, private roads, etc. - “I’m all in for a 100-foot buffer if I know exactly what the exemptions are, and they are reasonable.”

Stakeholders then discussed buffer issues and options. Comments included:

- The 100-foot buffer from Ches Bay regulations was originally aimed at Tidewater areas.
- More is better in terms of buffer function.
- Steeper topography needs more buffer.
- The Board-appointed Water Resources Technical Advisory Committee endorsed a 100-foot buffer.
- Buffers are not just for filtration.
- State has never studied the Piedmont areas for what kind of buffer is effective, which could lead to potential litigation.

**Stakeholders settled on five basic options for establishing buffer requirements, and measured their level of support:**

1. 100 foot buffer (as proposed in current draft amendments) with clear exemptions (9 in favor)
2. 35 foot buffer with limited exemptions (7 in favor)
3. A variable, “performance-based” standard (0 in favor)
4. 50 foot buffer with limited exemptions (3 in favor)
5. 175 foot buffer with some exemptions, but no less than 125 feet. (1 in favor)

**Other questions:**

- What about the state’s Phase 1 Watershed Implementation Plan (WIP)?
- HOAs are not well-represented [in numbers].
- What about the state’s Urban Development Area legislation?

**5. Review Results of Meeting** – A brief recap was discussed and reminder of continuation of the meeting to December 7.

**6. Adjourn** – Facilitator adjourned the meeting at 9:30 pm.

***Note Schedule of remaining meetings:***

Tuesday, December 7 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

**Summary Notes from Fifth Stakeholders Meeting 12-7-10**

Tuesday, December 7, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

1. **Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:30 p.m.
2. **Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the ground rules that were affirmed by the Stakeholder Representatives.
3. **Brief Recap of Results of First Four Meetings** – Facilitator reviewed highlights of first four meetings, noting that the stakeholders had:
  - established protocols and meeting schedule
  - reviewed issues and established priorities
  - resolved several minor issues
  - resolved the first major issue (RPA map)
4. **Continue Review Issues Matrix** – Stakeholders continued reviewing the Issues identified earlier.

**Buffer Width/Exemptions/Waivers**

Stakeholders continued review of the buffer width issue, focusing on the choice between a 100-foot buffer with clear exemptions, or a 35-foot buffer with limited exemptions (those two choices gained a roughly even split of support among stakeholders at the previous meeting).

Based on discussion at the previous meeting, the facilitator noted that a simple principle seemed to emerge:

For natural resource protection, the bigger the buffer, the better.

For landowner/homeowner protection, the smaller the buffer, the better.

Therefore, where is the proper balance between these two values?

***100-foot Buffer Discussion:***

Stakeholders began with consideration of the 100-foot buffer, and identified the various problems or impositions that such a buffer might cause to landowners and homeowners.

Comments from individual stakeholders about the **impact** of a 100-foot buffer were:

1. **House lots and HOA lands.** Would impact on suburban/HOA common lands and small lots – it would limit the use or disturbance and would require replacement of vegetations which would cost homeowners money. Administrative waivers hardship determinations were mentioned as ways to help protect the homeowner – concerns expressed included the process cost (time and money) and the uncertainty of whether a waiver would be granted.

Most of or the entire lot would be a no disturb area. *[Note that County staff had previously provided the percentage of individual lots affected in the November 16, 2010 Meeting Summary. Of 8,515 parcels with RPA, 361 (4%) have greater than 75% RPA.]*

Concern was expressed regarding the need to obtain permission from the County to remove dead trees. *[Note that Section 1222.14(d)iii of the CBPO allows for the removal of dead trees without approval from the County.]*

2. **Agriculture.** Would interfere with agricultural activities. Would affect fewer people but more land. Would greatly impact livestock operations. Would affect implementation of Best Management Practices (BMPS) by requiring a 100-foot buffer (one stakeholder clarified that a 25-foot agricultural buffer is permitted in the current draft ordinance amendments with the implementation of BMPs).
3. **Infrastructure encroachments.** Would cause problems with infrastructure – various intrusions must occur within a 100-foot buffer, including roads, sewer lines, etc. One stakeholder noted that these items are identified as exemptions within the RPA in the current draft ordinance amendments.
4. **Density.** Concern was expressed that the buffer could affect the allowable density on properties. *[Note that Section 1222.07(b) of the current draft ordinance amendments provide that the land area within the RPA may be included in the land area for density calculations.]*
5. **Uncertainty.** “100 feet” would become the “minimum” and the County would ask for even greater buffers during the development review process.
6. **Tax Revenues.** Would negatively affect County tax revenues by taking land out of production, diminishing property values and taking away development potential.



- 7. Redevelopment.** Would inhibit redevelopment within the RPA. *[Note that the current draft ordinance amendments authorize redevelopment in the RPA.]*
- 8. Designed for Tidal Areas.** It's a "one size fits" all standard that was originally designed for tidal areas.
- 9. Administrative Burden.** Would cause an administrative burden on County staff to enforce.

After completing the list of impacts of the 100-foot buffer on landowners, the stakeholders began to examine each impact to identify possible ways to reasonably mitigate the impacts.

#### **House lots and HOA lands:**

Three major methods were identified for mitigating the impact/burden on homeowners:

- Exemptions
- Waivers
- An alternative measure such as a performance standard of some kind.

#### *Discussion points:*

- Need to distinguish between "buffer" and "setback"
- Exempt property created or established before adoption of the ordinance ["grandfathering"]
- Exempt approved lots and projects (those that have government approval) ["grandfathering"]
- Exempt areas or lots as of a certain date ["grandfathering"]
- But do not allow a total exemption.
- Exempt smaller lots.
- Require minimum planted buffer.
- Clarify expectation of planting within the buffer
- Allowed engineered solutions as alternative to just distance (100 feet)
- Designate house lots and HOA property as exempt IDA or an equivalent designation
- Exempt areas served by public water and sewer.
- This should be "our" ordinance, not just Chesapeake Bay Ordinance.
- Reduce the buffer.
- The County Attorney was asked about the notion of reducing the buffer and responded that the County has some latitude to

- do less than called for in the Bay Act but that it can not be arbitrary.
- Towns should be included.

### ***35-foot Buffer Discussion:***

Before completing the discussion of the 100-foot buffer, the stakeholders decided to take up the other choice on the table, the 35-foot buffer.

Stakeholders identified the various problems that such a 35-foot buffer might cause:

- 1. Impact of Development on Streams.** Development next to streams impacts the stream; keeping development away from the stream reduces the impact on the stream (recognizing that some stream crossings are necessary for roads, etc.) Therefore, a 35-foot buffer could be eliminated by normal sewer and other infrastructure improvements, thereby actually leaving no buffer at all. A wider buffer is needed to compensate for exemptions.
- 2. Imposition to HOA lands.** 35-feet is still an imposition to the homeowner, mainly to HOAs. After some discussion, staff cited data from Stafford County, Fairfax County and Prince William County that indicated that the assessed value of land within an RPA was not substantially affected unless a significant amount of it was located within the RPA.
- 3. WIP funds.** A 35-foot buffer would need a resource management plan, that includes a Nutrient Management Plan, Soil Conservation Plan, etc., to be consistent with the WIP. This combination of practices only applies to the agricultural provisions in the WIP. One stakeholder noted that the Bay Act is more permissive than the WIP in regard to agriculture, because a 25-foot buffer is allowed with the implementation of BMPs (e.g. a nutrient management plan), as opposed to a 35-foot buffer with implementation of BMPs.
- 4. Forested buffer.** Would a forested buffer be required?
- 5. Sediment control and nutrient reduction.** The median width for adequate sediment control and nutrient reduction is 100 feet.
- 6. Variation in resource areas.** The data is not consistent between different resource areas - tidewater vs. piedmont, etc.
- 7. Balance Needs.** The buffer should be defined for the minimum width and the maximum effectiveness.
- 8. Variation in soils, slopes, community values, and associated buffer widths.** Different soil types and slopes would result in different buffer widths, values and priorities regarding water quality impacts also necessitate different buffer widths.

**9. Buffer vs. Floodplain.** A 35-foot buffer doesn't always cover the width of the floodplain. Doesn't help protect our water quality.

One stakeholder suggested a 10-foot buffer width based upon an EPA study that indicated that such a buffer would remove 50% of all contaminants.

A proposition was offered to determine the group's preference on buffer width. Several combinations of choices for buffer width options were offered. Stakeholders then took a measure of consent for considering each choice. (24 voting stakeholders were at the table):

1. 100 feet or 35 feet, point by point (8 in favor)
2. 100 feet or 35 feet, up or down (0 in favor)
3. 100 feet or 35 feet or 10 feet (16 in favor)

The stakeholders then assessed their support for 100, 35 or 10 foot buffers:

1. 100 feet with clear exemptions identified (5 in favor)
2. 35 feet with limited exemptions identified (17 in favor)
3. 10 feet with limited exemptions identified (10 in favor) *[Note that several people voted again for this option, thus invalidating it, but #2 remained the overall preference, nonetheless.]*

Note that the REDC representative abstained from the vote.

**5. Review Results of Meeting and Next Steps**

The stakeholders revisited the meeting schedule. A proposition was offered to meet on the second Tuesday of the month during December, January and February, and report to the Board of Supervisors in March. Several alternatives were discussed, including finishing in January, and meeting on December 9, 14, and 16. The stakeholders considered various factors, including the original assignment from the Board of Supervisors, as well as the Board's winter meeting schedule. None of the proposed alternatives received sufficient support to carry forward, so stakeholders settled on their original meeting schedule of December 9 and 14, and in addition, to meet with representatives from the state to discuss the WIP, at 5:00 pm on December 14, prior to the final stakeholders meeting at 6:30 pm.

**6. Adjourn** – Facilitator adjourned the meeting at 9:45 pm.

***Note Schedule of remaining meetings:***

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

(Note that the WIP will be discussed with state representatives at 5:00 pm on December 14).

**Summary Notes from Sixth Stakeholders Meeting 12-9-10**

Thursday, December 9, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:31 p.m.
- 2. Agenda Overview and Recap of Results to Date** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the ground rules that were affirmed by the Stakeholder Representatives.
  - established protocols and meeting schedule
  - reviewed issues and established priorities
  - resolved several minor issues
  - largely resolved two major issues (RPA map/delineations; buffer width)

The Facilitator asked stakeholders to comment on the process to date and raise any issues they might have with how things are going. Comments included:

- We have become sidetracked from our task of reviewing and modifying the draft amendments.
- We've been repeating some points over and over.
- There have been some factually incorrect statements made by members.
- Each member needs to "step up" and participate fully in the discussions.
- South Riding HOA is not able to attend tonight and asked that the group not vote on any matters until next week.
- This compressed schedule has "shafted" the HOAs.
- We shouldn't have to just "rubber stamp" the draft amendments.
- Should we just say there is no consensus?
- We should have an opportunity to recommend that the Board not adopt an ordinance at all.

Regarding the issue of incorrect factual statements, the facilitator noted that disagreement about basic facts is widespread among the members and thus it would be best to simply state our views/disagreements and move on, rather than try to resolve every

dispute about factual data. The stakeholders accepted this without clear objection.

**3. Continue Review Issues Matrix** – Stakeholders continued reviewing the Issues identified earlier.

**Buffer Width/Exemptions/Waivers (cont'd from Dec. 7)**

A proposition was made that the group revisit the buffer decision because that discussion was not completed during the previous meeting. Discussion points on this matter included:

- We should stick with our vote.
- We never completed our discussion of the 100-foot buffer.
- We need to understand the *actual* impacts on HOA properties and homeowner lots.
- Could we look at the exemptions that might apply to the 100-foot buffer in case the Board adopts it?
- We should take this up at the end our work.
- We should put it first on the next meeting's agenda for discussion.

The stakeholders settled on placing a discussion and listing of possible exemptions under a 100-foot buffer provision on the agenda for the beginning of the next meeting.

Stakeholders then continued with the review of the 35-foot buffer, to identify a list of possible “limited” exemptions, as agreed at the previous meeting.

Exemptions identified for consideration:

- a. Agriculture and rural economy uses, conditioned on having a nutrient management or farm plan approved by the SWCD and the application of no-till practice.
- b. Farm Ponds.
- c. Residential accessory structures in the RPA up to a cumulative total of 150 square feet. Also consider more than 150 s.f. in the landward portion of the buffer.
- d. Existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.
- e. Private roads, wetland restoration areas, septic fields, storm drains.
- f. Wet ponds.
- g. No un-funded mandates within the buffer.
- h. Planned/approved trail crossings of streams.
- i. Existing development.

j. A reasonable amount of certain disturbances [such as required infrastructure elements].

Q: What about water quality? It was noted by a representative that if you add all these exemptions for only a 35-foot buffer, you end up with virtually no buffer at all, and may not gain anything in regard to water quality.

Extensive discussion of the pros and cons of these exemptions occurred. It was noted that the exemptions should not be based upon a situation that is the exception, as opposed to the rule, based upon the worst case scenario. Particular attention was given to the effects of item a. (agriculture, etc.) in terms of the effect of requiring the nutrient plan and whether or not that could make fencing de facto mandatory in some cases. Stakeholders chose to measure consensus for item “a”. Eleven expressed support for that exemption as drafted, six opposed (20 at the table).

A proposition was offered that a more general statement about limited exemptions be provided. After further discussion, there was broad consent with no objections to report that potential exemptions within a 35-foot buffer would include items “such as” those in the list above. The proposition to support reporting the “such as” list was approved 14 to 5, with 20 members at the table.

It was also noted that approval of disturbances in the RPA could be based upon hardship (e.g., by exception), instead of by exemption.

**Grandfathering** (Items 9, 10, and 36 on the matrix)

The County Attorney gave a brief presentation on the concept of grandfathering and the language proposed in the draft amendments. After substantial discussion, four major propositions were put on the table for consideration.

1. Use the phrase “to the greatest extent possible” for grandfathered projects to conform to the new requirements.
- 2.a. Use the phrase “to the extent possible” (same as Fairfax County)
- 2.b. Use the phrase “to the extent practicable”

(Staff noted that the above three choices would require conformance to the new regulations).

- 3.a. Grandfather any approved plan
- 3.b. Grandfather any accepted plan

(Staff noted that the above two choices would *not* require conformance to the new regulations).

4. County Attorney's language (accepted plans and approved plans), with removal of the phrase "to the extent possible"

The stakeholders measured consent of #4 above; 14 were in favor, 5 opposed. (20 at the table).

Two related concerns about the preferred choice were noted:

- Timing is important
- Whether an application must have been forwarded to the Board following a Planning Commission public hearing in order to be grandfathered is a big issue for the Chamber of Commerce.

#### **4. Review Results of Meeting and Next Steps**

The facilitator asked the stakeholders about how their findings should be reported out to the Board of Supervisors. Several ideas were suggested and discussed:

1. Offer an overarching comment about how the process should move forward beyond the Stakeholders group.
2. Facilitator and/or staff will fill out the original Issues Matrix showing the findings of the Stakeholders for items that they addressed; facilitator will compile all of the meeting notes into a full summary.
3. Allow each member to submit a 50-word summary statement about their views.

After some discussion, there were no clear objections to doing all three of the above.

An additional suggestion was made for moving forward:

- Allocate the first two-thirds of the December 14 meeting to finishing the issues discussion.
- Allocate the last third of that meeting to identifying things we didn't get to and the impact of those things.
- Meet again on Thursday the 16<sup>th</sup> to approve the notes.

After some discussion, including a comment by the facilitator that he had a prior public meeting commitment in Chesterfield County on the 16<sup>th</sup>, the stakeholders accepted December 14<sup>th</sup> as the final meeting. (As agreed, they will begin by identifying the exemptions that would be appropriate for a 100-foot buffer, even though they noted that making that list does not in and of itself change the previous decision to recommend a 35-foot buffer).

The facilitator said that the matrix and the summary notes through December 9 would be completed and distributed prior to the final meeting. The full matrix and notes through the final meeting will be completed no later than December 20 and e-mailed to the stakeholders for review.

In addition, members can submit a 50-word concluding comment (in digital form) that will be compiled verbatim and attached to the record. The final compilation of all materials for reporting out will need to be completed in a timely fashion in order for staff to meet the assigned Board of Supervisors schedule.

**5. Adjourn** – Facilitator adjourned the meeting at 9:35 pm.

***Note Schedule of remaining meetings:***

Tuesday, December 14 – in the BOS meeting room - 5:00 pm – Meet with state representatives to discuss WIP; final stakeholders meeting at 6:30 p.m. to 9:30 p.m.

**Summary Notes from Seventh and Final Stakeholders Meeting 12-14-10**

Tuesday, December 14, 2010, 6:30 p.m. – 9:30 p.m., Board of Supervisors Meeting Room, Leesburg

(**Note:** Russ Baxter, Chesapeake Bay Coordinator with Virginia DEQ, met with stakeholders from 5:00 p.m. to 6:10 p.m. to present and discuss the state's draft Watershed Implementation Plan (WIP))

- 1. Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:31 p.m.
- 2. Agenda Overview and Recap of Results to Date** – Facilitator thanked the stakeholders for their efforts to date, and asked stakeholders to comment on the process and raise any issues, including whether stakeholders could affirm that all decisions had been made in accord with the ground rules adopted by the group. Two representatives commented that the group's decision to rely on a 2/3 super-majority for making decisions, rather than by actual consensus, took the group off track from the Board's direction. Other than that comment, there were no specific examples cited of decisions made that were not in accord with the ground rules.

The Facilitator then asked the group what items they would like to put on the agenda, in addition to giving guidance about how to report out the results of the group's work.



Suggestions for priority issues to discuss, and the decision of the group regarding them were as follows (note that 25 representatives were at the table):

- 100-foot buffer exemptions and impact on the H.O.A.'s – What would be needed to make it work? One stakeholder noted that five of the HOAs had no RPA in their area and others had little impact. (The group decided by a tally of five in favor and 18 against, *not* to put this on the agenda)
- RMA – whether to have it or not (the group decided by a tally of eight in favor and 12 against, *not* to put this on the agenda)
- Issue #27 from the matrix – IDAs. (the group decided by a tally of 10 in favor and 8 against, to put this on the agenda – this item ranked as the *third agenda priority* for the evening)
- Vested Rights (The group agreed that this was a legal issue that needed to be clarified by the County Attorney)
- Issue #39 from the matrix – Simplify the Draft Ordinance provisions (the group decided by a tally of 15 in favor and 4 against, to put this on the agenda – this item ranked as the *second agenda priority* for the evening)
- Issue #34 from the matrix – Exempt HOA-owned properties from the RPA (the group's tally was 9 in favor and 9 against – it was noted that this was also a legal issue and that there was likely a problem with applying different regulations to a specific class of property owners.
- Issue #2 from the matrix – Exempt stormwater ponds (exempt wet ponds) (the group decided by a tally of 16 in favor and 4 against, to put this on the agenda – this item ranked as the *first agenda priority* for the evening)
- A new issue was proposed, to recommend to the Board of Supervisors that it not go forward with these draft regulations in any form (the group decided by a tally of 8 in favor and 11 against, to reject this proposition.
- Other comments included:
  - We need to identify specific elements of the draft that should be modified, which is what the Board of Supervisors asked us to do.
  - The REDC (Rural Economic Development Council) doesn't have its own consensus – thus, it abstains from policy votes.
  - A 35-foot buffer would take the Chesapeake Bay out of our urban areas.
  - None of the environmental stakeholders support the 35-foot buffer.
  - Use the same exemptions for 100-foot buffer as for 35-foot buffer.
  - We strayed from our mission – it turned into a theoretical opposition to the proposed CBPO.
  - We didn't look at specific examples.
  - Just because you're not affected by these draft regulations doesn't mean you don't care about them.

The group also agreed by general affirmation to take up at the end of the agenda, the issue of how to report out its findings.

**3. Continue Review Issues Matrix** – Stakeholders continued reviewing the issues identified earlier in accord with the priorities established.

**1. Issue #2 from the matrix – Exempt stormwater ponds (actually “wet” ponds)**

Comments and discussion:

- It was noted that staff supported removing wet ponds from buffer areas.
- Does this include farm ponds?
- Does this include dry ponds?
- Does this include all stormwater management facilities?
- Need to deal with old dry ponds that are problems for water quality.
- Maintenance of ponds is an issue.
- Buffers surrounding ponds would provide additional water quality benefits.

The group tallied support for the proposition that “all stormwater management facilities (wet and dry stormwater management facilities, farm ponds, and amenity ponds)” would be exempt from buffer areas, with 18 in favor and 3 opposed. (25 at the table).

**2. Issue #39 from the matrix – Simplify the draft ordinance provisions and processes**

Proposed Recommendation: All processes in the ordinance should be re-reviewed with the goal to simplify all of them, for homeowners, developers, farmers and staff.

The discussion centered on the question of what does simplify mean?

- Some areas need more clarity; define what steps are required and when they occur.
- Doesn’t mean reducing water quality.
- Processes should be structured based upon current capabilities (people, processes, and technology).
- Remove “unnecessary and costly” steps
- Provide certainty of process/timeline.
- Remove inconsistencies and define “change in use.”
- It was noted that the group was advisory and was not writing the ordinance.

A tally of support for the proposition with the additions noted yielded 22 in support with no opposition recorded (26 at the table).

### **3. Issue #27 from the matrix - IDAs**

Proposed Recommendation: Recommend that buffer encroachments be authorized in the Rt. 28 Tax District and other designated areas targeted for economic development purposes (as opposed to designating IDAs).

Discussion/comments included:

- This seems irrelevant. What is needed beyond the proposed 35-foot buffer?
- IDA is a common provision for flexibility.
- Rt. 28 district doesn't meet the IDA criteria based upon the Existing Conditions report for Route 28.
- Why single out this one area? Message is about the importance of economic development.
- Send a message about water quality?
- We've lost the balance of water quality and economic development.
- The Bay Act balances water quality and economic development.
- What evidence is there that applying the Bay Act will hurt economic development; look at neighboring jurisdictions.
- Consider adding to the list of exemptions. Don't give tax breaks to big commercial users.
- Many other urban areas do incorporate water quality standards.
- Water quality can enhance economic development.

A tally of support for the proposition yielded 16 in support and seven in opposition (26 at the table).

### **4. Review Results and Next Steps**

The final task was to decide how to report out to the Board of Supervisors. The facilitator proposed a set of elements for a report, based upon the discussion at the previous stakeholder meeting.

After some discussion, the group affirmed by acclamation, the following items of content and procedure for the report:

#### **Content:**

1. Summary of Actions taken by the Stakeholders Group.

- What happened (a general description of the meetings and process, including the specific actions taken on the issues, using the Issues Matrix as the basis for the summary, listing the resolved issues in descending order of level of agreement, and the general nature of the splits or differences in viewpoint among the representatives).
  - What didn't happen – issues not addressed or affirmed
  - Summation of general points of disagreement among the representatives
2. Compiled facilitator notes from all of the meetings.
  3. Completed, updated Issues Matrix.
  4. An individual written comment from each member who wishes to opine, limited to 150 words total. *(Note that some members suggested an open-ended length for this comment piece, but after some discussion, the group agreed to the urging by the facilitator to accept the 150-word limit for the purposes of effectiveness and conciseness).*

**Process and Schedule:**

After some discussion, the group affirmed by acclamation, the following process and schedule:

1. Facilitator will compile meeting notes and draft summary report, and submit to county staff by close of business 12-20-10.
2. County staff will distribute the draft to stakeholders via e-mail on 12-20 *(Note that the goal will be to distribute these materials on 12-20, but as a practical matter, it may need to be 12-21).*
3. At that time, the deadline for getting comments back from stakeholders on the draft report will be included in the distributed material, based upon the staff's determination of the time required to prepare the packet for the Board's second business meeting in January (1-19-11).
4. After the date of the announced deadline for comments to be received from stakeholders (TBD), the facilitator will make necessary revisions and/or additions to the report based on stakeholder comments. Staff will prepare its recommendations, and distribute the updated matrix in advance of the 1-19-11 Board business meeting.

**5. Adjourn** – Facilitator adjourned the meeting at 9:00 pm.

**APPENDIX D.**

Entire written record – available on the county website: <http://www.loudoun.gov/Default.aspx?tabid=3425>